

# Working with TMLIRP Counsel

Texas City Attorneys Association  
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- ▶ TMLIRP was created under the Interlocal Cooperation Act to administer the self-insurance program of its member local governments.
- ▶ Additional authorization for such self-insurance programs by local governments is found in Chapter 2259, Gov't Code, and Chapter 504, Labor Code.
- ▶ TMLIRP is not insurance.

## **Liability/Property Interlocal Agreement**

### **Section 11.**

. . . The Pool Member hereby appoints the Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant and his attorney and negotiate within authority previously granted by the Fund. . . .

## **Liability/Property Interlocal Agreement (cont.)**

. . . With the advice and consent of the Fund, the Fund staff and the Contractors will retain and supervise legal counsel for the prosecution and defense of any litigation. All decisions on individual cases shall be made by the Fund through the Fund staff and the Contractors, which includes the decision to appeal or not to appeal. However, any Pool Member shall have the right in any case to consult with the Fund on any decision made by the Fund staff or Contractors. . . .

## Liability Coverage Document General Conditions

### I. Defense

. . . In the event that there is a conflict of interest between the **Fund** and the **Member** or **Covered Party**, the **Fund** shall retain its contractual right to select defense counsel and control the defense of the **suit**, without waiving its right to pay only those **damages** which are covered under the terms of the **Plan**.

## Liability Coverage Document General Conditions

### IV. Member's Duties in the Event of an Occurrence, Wrongful Act, Claim, or Suit for All Coverages Adopted

- C. The **Member** or **Covered Party** shall cooperate with the **Fund** and give any information as may reasonably be required . . . ; and the **Member** or **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Member** or **Covered Party** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of an accident. It shall be understood that the **Member** or **Covered Party** shall not take any action whatsoever, subsequent to an **occurrence** or **wrongful act** that could increase the liability exposure of or jeopardize the **Fund** in any way. Failure of the **Member** or **Covered Party** to comply with the requirements of this paragraph, at the sole discretion of the **Fund**, may be declared a material breach of the duties of the **Member** or **Covered Party** under the **Agreement** and result in forfeiture of coverage for that **claim**.

The TMLIRP Board of Trustees has adopted a list of approved attorneys.

A successful defense depends on good communication between the City Attorney, the defense counsel, and TMLIRP.

## Tips from Defense Counsel

### Pre-Litigation

(Prior to assignment to Litigation Counsel)

1. Remember that you may be among the first to know about the claim.
2. Preserve Evidence.
  - Witness statements
  - Incident reports
  - Photographs
  - Tape recordings
  - Tangible evidence

## Tips from Defense Counsel

### Pre-Litigation

(Prior to assignment to Litigation Counsel)

3. Instruct the key witnesses and governmental representatives.
  - No interviews with opposing lawyers
  - No statements to the press
  - Do not alter reports
4. Investigate facts and identify problem areas.

## Tips from Defense Counsel

### Pre-Litigation

(Prior to assignment to Litigation Counsel)

5. Identify potential conflicts.
  - Is subject employee still employed?
  - Was disciplinary action taken by governmental entity?
  - Are there related lawsuits?
6. Advise City Council and City Officials of status.

## Tips from Defense Counsel

### Working with Assigned Counsel

1. Prompt communication with litigation counsel is crucial.
  - “Scouting report” of basic information
  - Advise of identified strengths and weaknesses
  - “The Rest of the Story”
  - “Roadmap” to knowledgeable individuals
  - What is the governmental entity’s settlement position at this point?

## Tips from Defense Counsel

### Working with Assigned Counsel

2. Meeting to review documents.
3. Keeping the governing body informed.
4. Involvement in discovery process.
5. Hearings.
6. Mediation.
7. Pre-trial/Trial.

## Tips from a City Attorney

- ▶ What you have to add to the process
  - Who has the information that is relevant to the case?
    - Inform counsel chosen by TMLIRP where information and documents are
    - Inform city staff what they need to do to assist in litigation

## Tips from a City Attorney

- ▶ What you have to add to the process
  - What is the rest of the story?
    - The story that is not apparent from the pleadings
    - Example - the gadfly that is urging on the plaintiff

## Tips from a City Attorney

- ▶ What you have to add to the process
  - What politics are at play?
    - Is the plaintiff connected with someone on council?
    - Is the plaintiff complaining of something with which a councilmember is associated?
      - Example - lawsuit over a politically controversial project



## Tips from a City Attorney

- ▶ What you have to add to the process
  - Communicating back to staff and council
    - Depending on your assigned counsel, may be handled by them
    - May be an update: here's what we have learned
    - May be a settlement proposal.
    - May be a report on completed lawsuit

## Tips from a City Attorney

- ▶ What you have to add to the process
  - Your role will vary with
    - The strengths of your assigned counsel
    - The nature of the case
    - The preferences of your council