




Item #9

March 1, 2017

TO: Gold Coast Transit District
Board of Directors

From: Steve L. Rosenberg 
Director of Finance and Administration

RE: Receive and File Report on California Transit Liability Trends and GCTD's
Insurance Coverage as Part of the California Transit Indemnity Pool (CalTIP)

I. EXECUTIVE SUMMARY

GCTD obtains liability coverage, vehicle physical damage coverage and related risk management services through jointly pooling resources with thirty-four other California transit providers that are members of the California Transit Indemnity Pool, known as CalTIP. CalTIP, a joint powers authority (JPA), was formed in 1987 in response to insurance challenges all public transit agencies faced in the late 1980s. By organizing as a JPA, CalTIP allows its members to self-insure through a risk pool and to obtain reinsurance and excess insurance through the commercial market on a group-purchase basis. GCTD's predecessor SCAT joined CalTIP in 1995.

CalTIP provides its members many benefits not always readily available through commercial insurance, such as coverage tailored to the specific needs of public transit, distribution of excess contributions back to members rather than to shareholders, and value-added risk control and training services.

CalTIP is managed by Bickmore Risk Services in Sacramento. Bickmore specializes in managing public insurance risk pools. Each CalTIP member is represented on its Board of Directors. I have served on the CalTIP Board since 2007 and I sit on both the Finance & Administration and Oversight (Executive) Committees. CalTIP membership has been and continues to be an excellent investment for GCTD.

Over the past two years GCTD has seen a material increase in its costs for liability and vehicle damage insurance, from \$475,000 in FY2014-15 to \$519,000 in FY2015-16 to \$801,000 in FY2016-17. We anticipate another material increase in the FY2017-18 budget. Part of the reason for the size of the increase was that in prior years GCTD was receiving credits for lower claim costs in earlier years and using those credits to

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reduce its expense. In FY2017-18 we anticipate using up the last of our credits.

Transit agencies throughout California are experiencing a dramatic increase in liability costs over the past three-to-five years, and that trend is reflected in CalTIP's experience. This trend is not unique to California; it is being exhibited in numerous states where public agencies face both joint and several liability laws and the lack of a liability tort cap for public entities.

Joint and several liability is the legal concept that when multiple defendants are liable for a plaintiff's damages, each defendant is jointly liable for the full extent of those damages even if a defendant caused a minor portion of the plaintiff's damages. We have recently seen a dramatic upturn in high-dollar jury awards – some in cases where the agency's liability was questionable or minor. This has also lead to higher negotiated settlements. Many states have tort caps which limit jury verdicts against public agencies; for example, Nevada has a \$100,000 tort cap. California has no such limit.

This report provides an overview of GCTD's insurance coverage with CalTIP, the liability issues facing California transit, how it impacts CalTIP, how CalTIP is responding, and what to expect going forward.

II. BACKGROUND

CalTIP Background

The California Transit Indemnity Pool (CalTIP), a joint powers authority, was formed in 1987 as a creative response to insurance challenges all public transit agencies faced in the late 1980s. By organizing as a joint powers authority, CalTIP allows its members to self-insure through risk pool and to obtain reinsurance and excess insurance through the commercial market on a group-purchase basis. GCTD's predecessor SCAT joined CalTIP in 1995.

CalTIP has thirty-five (35) members; seventeen (17) are stand-alone transit authorities or districts and eighteen (18) are towns, cities or counties that run transit service. Some CalTIP members directly operate service, some contract their service and some combine both methods. GCTD is the 7th largest member based on miles insured.

CalTIP bylaws require each member appoint a director and an alternate director to the CalTIP Board, with each member having an equal vote. The Board of Directors meets twice each year. Most of the work is done by committees; Member Services, Finance and Administration and Oversight (Executive), which meet two-to-four times per year. CalTIP is managed by Bickmore Risk Services under a five-year contract. Bickmore manages sixteen (16) California insurance pools. All key staff supporting CalTIP are Bickmore employees, including the GM.

CalTIP also contracts with other service providers such as York Risk Services Group for third party claims administration services, Aon Risk Consulting for actuarial services, and Alliant Insurance Services for brokerage services.

Coverage

CalTIP maintains pooled coverage programs for auto liability, general liability, public officials' errors and omissions, and vehicle physical damage along with bundled services for claims administration, safety, loss prevention, and risk management. CalTIP's mandatory Liability Program provides protection against covered losses wherein the member is legally liable for bodily injury or physical damage caused by either the member itself or an owned vehicle. CalTIP's pooled and excess coverage, combined with various self-insured retention options, provides general liability, public officials' errors & omissions and auto liability.

Members are given the opportunity to select a self-insured retention (SIR) that best fits their agency. The SIR is essentially a deductible. These options are: \$0 (\$10,000 pre-funded); \$25,000; \$50,000; \$100,000; and \$250,000. CalTIP self-funds or "pools" the first \$1.25 million of coverage for any claim; it is expected this pooled layer will increase to \$1.5 million in FY 2017-18. That amount is inclusive of the member's self-insured retention. CalTIP then purchases reinsurance and excess insurance for losses that exceed CalTIP's pooled program layer. CalTIP members may elect liability coverage at the \$5M, \$10M, \$20M or \$25M levels.

GCTD participates at the \$25 million limit in the Liability Program, and also purchases optional Vehicle Physical Damage insurance at the \$30 million level. GCTD has historically participated at the \$0 SIR level, but is presently considering a change to a higher SIR level.

Cost Structure

CalTIP calculates Liability Program contributions using three distinct components: Administrative Deposit, Loss Fund Deposit, and Excess Deposit.

The Administrative Deposit is the portion of the contributions that funds the general and administrative expenses of the organization. These expenses include, in part, program administration, claims administration, financial audit, banking and investment services. General and administrative expenses are allocated amongst the members using a formula that is part variable (by miles driven) and part fixed cost per member.

The Loss Fund Deposit is the portion of the contributions that funds the pooled layer (the first \$1.25 million) of coverage. The Loss Fund Deposit is charged based on each member's estimated Revenue and Non-Revenue Miles and the actuarially determined rates at the member's selected self-insured retention. An individual member's experience modification factor, or ex-mod, is then applied to the Loss Fund Deposit portion to adjust for a member's loss experience.

The third component is the Excess Deposit which is the portion of the contributions above the CalTIP pooled layer of coverage. The Excess Deposit is determined based on the group-purchase reinsurance and excess insurance rates and each member's total Revenue Miles and selected limit of coverage of \$5 million, \$10 million, or \$25 million. The sum total of the Administrative Deposit, Loss Fund Deposit, and Excess

Deposit equals the total Liability Contributions charged to each member.

CalTIP is a member-owned organization and any surplus or “profits” benefit the members through the distribution of dividends. CalTIP performs an annual retrospective adjustment calculation which allocates incurred costs or assets back to members participating in specific program years. Retrospective returns (dividends) are distributed to the membership if CalTIP is meeting its overall surplus equity targets. The lower the claim costs the greater the retrospective adjustment or return.

This retrospective adjustment process has worked strongly in GCTD’s favor until the last two years. GCTD has received dividends through the retrospective adjustment calculation until FY15-16 when the CalTIP Board decided to maintain its surplus due to adverse claims experience reducing program equity below the target.

Recent Experience

California is one of 12 states in the U.S. with joint and several liability and no tort caps to minimize public agency liability. In the past three-to-five years, transit agencies in California have seen a dramatic upturn in high-dollar jury awards – some in cases where the agency’s true liability was questionable or minor. This has also led to higher negotiated settlements.

This trend is not unique to CalTIP – we have seen it in many states where public agencies do not have tort cap. CalTIP has also had an increase in claims activity relative to distracted pedestrians and transit operators, dangerous condition of public property due to the placement of bus stops, and paratransit losses due to the improper security of mobility devices to name a few. The increase in claims activity, lack of tort caps, changes in the legal environment, etc., have had an impact on CalTIP and its members.

The impact of the changes noted above includes the following:

1. More conservative assumptions - changes in the actuarial assumptions for the Loss Fund Deposit. This resulted in higher funding rates charged for the pooled layer of coverage up to \$1.25 million.
2. Retraction and hardening of commercial reinsurance and excess insurance market – Reinsurance and Excess Insurance carriers that provide coverage above the CalTIP pooled layer of coverage (presently \$1.25 million) have begun pulling out of the California market, reducing coverage, or charging significantly higher rates for existing coverage.
3. Decrease in surplus due to adverse claims experience – As a result of previously discussed adverse claims experience; CalTIP’s once-ample surplus has been eroded. CalTIP is instituting a surplus building plan to assist in stabilizing and building up its surplus position.

4. No retrospective adjustments (dividends) are being distributed to the members – due to the decrease in the surplus, CalTIP is not meeting the minimum target benchmarks to allow for a distribution of surplus to the members. Without these distributions, members do not have surplus available to offset contribution increases.

5. Refinement and strengthening of CalTIP's operating requirements for members – CalTIP is currently evaluating several operational activities and policy documents for refinement. These refinements will allow CalTIP to enforce requirements consistently across the membership and exert more direct control over litigation.

Additionally, CalTIP's largest member – RTA in Riverside – is considering withdrawing from the pool (March 10th is their deadline). That would require all other members to cover a higher % of the administrative expenses; however, it is still to be determined whether RTA's departure would reduce the Loss Fund Deposit rates charged to the remaining members.

GCTD's Options

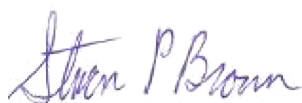
CalTIP remains GCTD's most viable option for liability and vehicle physical damage coverage. It would be too late for GCTD to leave CalTIP this year even if that were the preferred alternative. Even if RTA is able to find an equivalent level of insurance at a lower premium, there is no assurance that GCTD would be able to; RTA is a much larger agency (almost 6X) with a lower ex-mod rating. Exposing GCTD directly to the additional risk of the commercial insurance market may not be a wise long-term strategy. CalTIP was formed in the first place because in a very tight insurance market in the 1980s, commercial insurers decided they no longer wanted to insure transit. Should GCTD elect to evaluate commercial coverage outside of CalTIP, GCTD would need to procure, at a minimum, Third Party Liability Claims Administration (TPA) Services and Electronic Employee Pull Notice Program, both of which are currently provided by CalTIP as part of our annual contributions:

For now, GCTD's best course of action is to continue to emphasize safe driving and do all we can to keep CalTIP viable.

III. SUMMARY AND RECOMMENDATIONS

IT IS RECOMMENDED that the Board receive and file this report on the status of GCTD liability insurance coverage and cost trends.

GENERAL MANAGER'S CONCURRENCE



Steven P. Brown
General Manager