

# GARGANESE, WEISS D'AGRESTA & SALZMAN, P.A.

*Attorneys at Law*

---

111 N. Orange Ave., Suite 2000  
P.O. Box 2873  
Orlando, Florida 32802-2873  
Phone (407) 425-9566  
Fax (407) 425-9596

**Anthony A. Garganese**  
Board Certified City, County & Local  
Government

*agarganese@orlandolaw.net*

August 26, 2020

Honorable Mayor Milissa Holland  
and Members of the City Council  
Matthew Morton, City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

## **Re: Comments regarding Insurance Proposals**

Dear Honorable Mayor, City Council and City Manager:

At the August 11, 2020 Workshop, the City Council directed City staff and our office to conduct an additional evaluation of the FMIT and PRIA (PGIT) insurance proposals and provide additional comments to the City Council for consideration before a final decision is made by the City Council. In conducting this evaluation, our office was not provided proposed insurance coverage agreements. Rather, we had the benefit of reviewing the written proposals submitted by FMIT and PGIT which were likewise evaluated by City staff. We also reviewed City staff's evaluation of the two proposals including the PowerPoint presented to the City Council.

It was not necessary for us to duplicate City staff comments contained in the PowerPoint that we generally agreed with. However, we limited our comments to those matters that are, in our opinion, additional major coverage considerations and apparent inaccuracies related to stated coverage comparisons.

The following are our comments:

1. Public Officials (E&O) Liability

- E&O covers the heart of the City's operation and decision making by City officials including the City Council, City Manager, City Directors and City Boards ("City Officials").
- E&O provides coverage for wrongful acts within the scope of City Official's duties and any violation of Civil Rights and Constitutional Rights of any person which a cause of action for damages is made. E&O covers potentially large liability claims for deprivation of Constitutional Rights and Civil Rights that are not limited by sovereign immunity.
- For example, E&O covers alleged violations of Due Process; First Amendment – Freedom of Speech & Religion; Second Amendment; Equal Protection; Takings and Property Rights; Fourth Amendment Search & Seizures; Civil Rights & Discrimination; s. 1983 USC; etc.
- **FMIT** is \$3,000,000 per occurrence, with UNLIMITED COVERAGE for all claims. FMIT is an occurrence policy and coverage is provided for an injury that occurs while the policy is in effect. The policy then covers those incidents forever. No need to worry about policy termination or nonrenewal and buying extended reporting coverage.
- **PGIT** is \$3,000,000 per occurrence. However, annual total coverage is limited to \$3,000,000 for all claims. Furthermore, it is a claims-made policy (see page 100) – coverage is only triggered by a claim that is filed during the policy period. In other words, if the event occurs during the policy period, but the claim is made after the policy is terminated, no coverage is provided because the claim was not filed during the policy year. A claims made policy poses significant challenges and risks related to future coverage gaps because claimants generally have far more time to sue the City than the term of the City's insurance policy. Therefore, if a claims-made policy is terminated or not renewed, the City will be required to purchase additional extended coverage (aka "Tail Coverage") from PGIT to extend the reporting period in addition to paying for the new policy. For example, PGIT's proposal states it charges 200% of the expiring premium to extend the reporting period for only 12 months following the effective date of the cancellation or nonrenewal. However, even a 12 month extended reporting period will likely not cover the statute of limitation period for potential liability incidents that occurred during the terminated policy because in many cases a claim or lawsuit can be filed against the City 4 or 5 years from the time the plaintiff knew or had reason to know of the injury.

Based on PGIT's proposal, the estimated cost for an Extended Reporting Period for only a 12 month period is approximately \$458,446 [\$229,223 (General professional liability premium) x 200% = \$458,446.]

A claims made policy makes it more challenging and potentially costly to change insurance carriers and creates future coverage gaps that must be addressed by purchasing an extended reporting period with the former insurance carrier or prior acts coverage with the new insurance carrier.

## 2. Employment Practices Liability

- Employment practices covers all employment practices including, but not limited to, hiring, firing and disciplining of employees
- **FMIT** is \$3,000,000 per occurrence, with UNLIMITED COVERAGE for all claims. FMIT is an occurrence policy and coverage is provided for an injury that occurs while the policy is in effect. The policy then covers those incidents forever. No need to worry about policy termination or nonrenewal and buying extended reporting coverage.
- **PGIT** is \$3,000,000 per occurrence. However, annual total coverage is limited to \$3,000,000 for all claims. Furthermore, it is a claims-made policy (see page 100) – coverage is only triggered by a claim that's filed during the policy period. In other words, if the event occurs during the policy period, but the claim is made after the policy has terminated, no coverage is provided because the claim was not filed during the policy year. A claims made policy poses significant challenges and risks related to future coverage gaps because claimants generally have far more time to sue the City than the term of the City's insurance policy. Therefore, if a claims-made policy is terminated or not renewed, the City will be required to purchase additional extended coverage (aka "Tail Coverage") from PGIT to extend the reporting period in addition to paying for the new policy. For example, PGIT's proposal states it charges 200% of the expiring premium to extend the reporting period for only 12 months following the effective date of the cancellation or nonrenewal. However, even a 12 month extended reporting period will likely not cover the statute of limitation period for potential liability incidents that occurred during the terminated policy because in many cases a claim or lawsuit can be filed against the City 4 or 5 years from the time the plaintiff knew or had reason to know of the injury.
- Based on PGIT's proposal, the estimated cost for an Extended Reporting Period for only a 12 month period is approximately \$458,446 [\$229,223 (General professional liability premium) x 200% = \$458,446.]

- A claims made policy makes it more challenging and potentially costly to change insurance carriers and creates future coverage gaps that must be addressed by purchasing an extended reporting period with the former insurance carrier or prior acts coverage with the new insurance carrier.

3. EEOC Claims

- PGIT provides \$100,000 limit for defense and claims in their proposal that FMIT only reimburses 50% of City costs and no more than \$25,000 per claim. This PGIT claim ignores the FMIT's approach and practice of shifting EEOC defense to defense counsel under the employment liability coverage which then provides far superior coverage of \$3,000,000 per occurrence, and unlimited coverage.

4. Sewer Backup Claims

- PGIT claims in their proposal that FMIT's current sewer backup coverage is limited to only initial clean-up costs only and further limited to \$10,000 per affected property. In addition, PGIT claims property damage or loss are excluded and FMIT will not defend a suit against the City for damages. PGIT's claim is incorrect. FMIT not only offers initial clean-up costs, but sewer backup damages are covered just like any other 3<sup>rd</sup> party negligence claim (\$3,000,000 per occurrence). To the contrary, PGIT claims their own coverage is limited to \$200,000 per claimant including initial clean up, property damage and legal defense of allegations.

5. Windstorm

- PGIT claims in their proposal that it provides named storm coverage to members with no exclusions and at a lower deductible. This claim is misleading. Both PGIT and FMIT propose a 3% deductible. PGIT has no exclusions because PGIT included an additional \$10,500 premium to cover the exclusions. FMIT will likewise cover the exclusions (pedestrian bridge and pier) for an additional premium of \$8,033.

6. COVID-19

- Cities understand that COVID-19 is an unprecedented situation and future liability claims/coverage are uncertain. Future COVID-19 claims will likely be based on decisions made by public officials. Therefore, claims will potentially fall under the City's public officials and employment practices coverage. See Paragraphs #3 & 4

above as to substantial coverage differences between FMIT and PGIT that would apply to potential COVID-19 claims.

7. Auto Liability Deductible

- PGIT promotes a zero deductible compared to the current FMIT \$25K deductible. However, FMIT has quoted a zero deductible similar to PGIT.

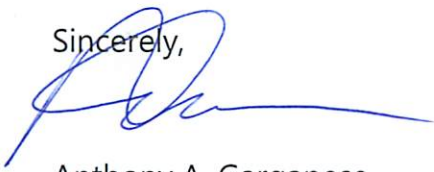
8. Antennas and Signs

- PGIT claims in its proposal that FMIT does not provide blanket or guaranteed replacement for signs and antennae towers, and that FMIT coverage is 100% coinsurance. This claim is incorrect. FMIT provides coverage for such items under the property schedule or property in the open (\$25k per item).

9. Dispute Resolution

- PGIT requires alternative dispute resolution (mediation and arbitration) regarding disputes and controversies arising out of the coverage agreement. The City is permitted to bring such disputes and controversies before a court of competent jurisdiction under the FMIT coverage agreement.

Sincerely,



Anthony A. Garganese

Garganese, Weiss, D'Agresta & Salzman, P.A.