

The



News

The Newsletter for LGIT Members

Spring 2012

## **GARRETT COUNTY SAVING MONEY THANKS TO LOWER PREMIUM**

### **Liability insurance costs drop 18 percent**

OAKLAND — Garrett County government is paying a lower liability insurance premium this fiscal year, resulting in a \$98,639 savings to county departments.

The annual premium decreased by 18 percent from the previous year, the county commissioners announced in a news release Tuesday.

The Local Government Insurance Trust, the county's liability insurer, offers longevity and loss control credits toward the annual premium. The trust also offered for

the first time a \$1 million limit for excess liability at no additional charge. This saved the county \$8,000 on the annual premium.

Liability claims and losses have been down for all county departments, which contributes to the decrease of the premiums, the commissioners said.

Garrett County has been a member of the trust's self-insurance program since 1987. The trust was founded by the Maryland Association of Counties and Maryland Municipal League to assist local governments with securing affordable insurance.

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## **From the Boardroom**

The Board of Trustees met on January 25, 2012, and took the following actions:

- Approved the recommendation of the Underwriting Committee to use a location versus a structure deductible for Flood Zone A, V coverage.
- Approved the recommendation of the Underwriting Committee to extend higher limits option for unscheduled property coverage until June 30, 2013.

- Approved the recommendation of the Underwriting Committee to use a per occurrence limit for employee property.
- Approved the Claims Committee recommendation to amend the Claims Committee Charter to delete the mandatory establishment of a Claims Coverage Subcommittee.

### **LGIT Board of Trustees**

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## The Advantages of Membership

LGIT far surpasses the typical insurance company by providing multiple services to minimize risk. These services include: the Employment Law Hotline, customized on-site and on-demand training, a video library, on-site property evaluations, on-site loss control consultations and management consulting. In addition, LGIT frequently offers “hot topic” programs such as “Unlawful Harassment in the Workplace”, “Local Governments and the Religious Land Use and Institutionalized Persons Act” and, new this spring, “Interaction of the Americans with Disabilities Act, Family Medical Leave Act, and Fair Labor Standards Act.”

Programs of this quality would cost our members thousands of dollars if not offered by LGIT. However, because our Board of Trustees believes that training is the most effective means of reducing risk and avoiding loss, LGIT will continue to offer cutting edge programs.

LGIT is also vastly different from commercial insurers in how it treats its members. You are not simply “customers” or “insureds”; you are members. Last year we returned \$3.75 million to members in the form of premium credits. This figure included \$1 million in longevity credits (a portion of which was given to every member of the Primary Liability Pool), \$2 million in rate stabilization credits (based on the member’s loss experience), and \$300 thousand in loss control credits (honoring members with the best loss control programs.) Finally, LGIT returned \$400 thousand to members of the Primary and Excess Liability Pools in the form of a \$1 million layer of free liability coverage.

We are already working on new products and services for our members, so, if you have any suggestions, please let me know.

Tim Ailsworth  
LGIT Executive Director

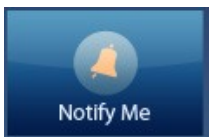
## Employment Law Hotline

The Hotline is a component of the HR Compliance Portal and is a service available to Liability Program members. It provides up to 30 minutes of free legal advice on employment matters. This member service is provided by LGIT, with the professional assistance of Karpinski, Colaresi and Karp, P. A. We have selected one inquiry of interest that was posed through the Hotline for publication.

**Q** A local government is served with a subpoena commanding it to produce the personnel records of a former employee. Must the local government comply?

**A** Under Section 10-616(i) of Maryland's Public Information Act, personnel records are deemed "confidential." This means that personnel records are ordinarily protected from disclosure except to the person who is the subject of the records and to the officials who supervise that person. Personnel records are those documents that directly pertain to employment and an employee's ability to perform a job. In the event of a subpoena for personnel records to be produced to a third-party at deposition or trial, the local government, acting upon the advice of counsel, may choose to object to the subpoena in writing under the applicable rules of court procedure and require an actual order of court before releasing the requested records.

**Call Before You Act!**  
**800.845.8055**



## Whitelist LGIT's Listserv "Notify Me"

Many email and Internet companies are now using programs to block unsolicited, unwanted advertising email, commonly called “spam.” However, these programs may also block emails you want to receive. To ensure that you receive notification of publication updates prepared by LGIT staff, please make sure to “Whitelist” [listserv@civicplus.com](mailto:listserv@civicplus.com). A Whitelist is a list of accepted items or persons in a set—a list of email addresses or domain names from which an email blocking program will allow messages to be received.

## Why is this important?

Spam has become a big problem. It has reached such proportions that most email services and Internet Service Providers (ISPs) have put blocking or filtering systems in place or have started relying on self-proclaimed “Blacklists” to tell the good guys from the bad.

LGIT applauds these services’ intentions to protect you from spam, but everyone agrees that the current solutions are far from perfect. Email that you have requested is often blocked because it fits some specification of what is spam. The more responsible anti-spam activists are working hard to cut down on these false positives, but in the meantime, you might unexpectedly find you are not getting your notifications from LGIT.

As it happens, there is something you can do to keep your notifications from falling into the false positive trap. You can fight the Blacklists with a Whitelist. Please Whitelist [listserv@civicplus.com](mailto:listserv@civicplus.com) now, before your notifications from LGIT are interrupted.

Of course, every email system is different. So, if you have questions on how to Whitelist a domain or email address, please contact your ISP or your email provider.

One thing you can do no matter what email system you are using is add the email address in the “From” line of your most recent notification to your address book.

## Products & Services

### Continuing Service Visit Program

LGIT is entering the seventh year of its Continuing Service Visit Program (CSVP), developed as an “added value” service to members.

This program is designed to assist members who have encountered specific loss problems with one or more lines of coverage. Members who experience a greater loss ratio in a line of coverage when compared to other members over a three year period are eligible for the CSVP. In 2011, thirteen members participated in the CSVP.

By focusing on specific loss drivers, we have successfully reduced members’ overall loss experience. As a result, costs to the Trust as a whole have declined.

The CSVP works as follows:

1. Through the use of statistics provided by the Director of Loss Control & Underwriting Services, specific service objectives are established for one or more of the member’s lines of coverage (General Liability, Automobile Liability, Automobile Physical Damage, Police Legal Liability, Public Official Liability, or Property.)
2. LGIT staff then produces a frequency and severity report based upon line of coverage and cause of loss. The report is thoroughly reviewed to identify specific loss drivers.
3. The results of the frequency and severity analysis are shared with the member by phone and/or personal visit.
4. The loss control manager or associate works with the member to establish specific objectives to reduce or eliminate the loss drivers.
5. Recommendations are made to the member and are included in a plan of action designed to reduce loss.
6. The recommendations include target dates, completion dates, and comments.
7. A follow-up date is scheduled and follow-up visits continue until progress is made.

Virtually every member who has participated in the CSVP has benefitted from it. Success has been achieved by working closely with members on specific problems and their solutions.

The CSVP has been expanded to include members with upward trends in losses. Statistical studies are reviewed by LGIT’s loss control professionals to identify those members who may need CSVP assistance.

We understand that many losses (deer strikes, arson, lightning, act of God, etc.) are more difficult to eliminate. Such losses are screened to allow more attention to be paid to more controllable loss drivers.

The CSVP differs from the bi-annual Hazard Evaluation Survey, which provides a broader perspective (audit) of the member’s progress over the preceding two years. Instead, the CSVP delves deeply into the root cause(s) of members’ specific loss drivers.

*If you would like more information on this program please contact Richard A. Furst, Senior Loss Control Manager at [dick@lgit.org](mailto:dick@lgit.org) or 443-561-1700.*

### Seasonal Alert! Miss Utility

With the arrival of spring and better weather conditions, our members will soon begin work on planned construction projects and roadside maintenance. With these activities come increased risks for damage to underground facilities and utilities.

In May 2010, Senate Bill 911 was signed into law and became effective on October 1, 2010. The bill altered the provisions of the law which regulate the protection of underground facilities. Primarily, the bill established a Maryland Underground Facilities Damage Prevention Authority to hear complaints and assess civil penalties for violations of the law.

#### The new law also changed marking procedures as follows:

- The Maryland Department of Transportation (MDOT) is now a member of the one-call system. The one-call system must be notified if the proposed excavation is within rights-of way owned or controlled by MDOT.
- A one-call ticket is valid for 12 (instead of 10) business days after the day on which the ticket is transmitted by the one-call system to an owner-member. “Business day” does not include Saturday, Sunday or legal holidays. The notification must be repeated if the excavation is not or will not be completed within the time period authorized by the ticket.
- Owner-members will have 2 business days (instead of 48 hours) after the ticket is transferred to an owner to mark the location and report that the location has been marked. If the owner-member is unable to mark the location within the time period because of the scope of the excavation, the owner-member must promptly notify the one-call system and the excavator and arrange a mutually agreeable schedule for marking the facility.
- Engineers and architects may initiate one “designer” ticket request for the purposes of planning a project. The owner-member must provide to a designer the type and location of underground facilities through the use of field locates, maps, surveys, and other records. This ticket MAY NOT BE USED FOR EXCAVATION.

#### If you strike an underground utility

- ALWAYS document the occurrence. This will help you defend against damage claims as well as civil penalties.
- Take photographs of the locate marks with a measure showing the locate marks in proximity to the underground facility.
- Complete a supervisor’s report of the event and identify all crew members at the location.
- Report the damaged facility to the owner.
- Record and document the name of any investigator for the facility that comes to the scene.
- Document all conversations with the facility owner or representative.

## On The Legal Front

### IS A PICTURE WORTH A THOUSAND LAWSUITS?

#### THE RIGHT OF PRIVATE CITIZENS TO RECORD POLICE OFFICERS IN THE DISCHARGE OF THEIR PUBLIC DUTIES

##### I.

The adage “A picture is worth a thousand words” means that a complex idea can be conveyed with just a single still image. Certainly, the world has greatly changed since the adage became common parlance in the 1920s. Some of the greatest changes the world has seen in the last few decades have occurred in the arena of technology. In the Twenty-First Century, computers and a myriad of other electronic devices are essential to how the world turns. We need them for business, recreation and simply to help us get through our daily lives. Millions of people carry laptops and other mobile devices for reasons ranging from business to personal pursuits.

As technology has advanced, the concept of the “still image” seems archaic, somehow replaced by moving images, first captured on film, later on videotape, and now digitally. As to the latter, video capture devices that can be held in the palm of the hand have long since surpassed early, bulky, and cumbersome video cameras. Millions of personal videos are stored on PCs, tablets, phones and discs. Millions more are uploaded to websites such as YouTube. In short, the presence of video recordings has become all pervasive, and, in many instances, all intrusive.

##### II.

With the incredible proliferation of video capture devices, it was simply a matter of time before they were adopted for use by the law enforcement community to capture the inter-action between an officer and the suspect. Surveillance cameras and dash cams are examples that come quickly to mind. Time has shown, however, that this coin does in fact have two sides. The other side is the use of recording devices by the public to record police activity. The tensions that have arisen between public and law enforcement over this issue erupted in our own backyard in 2010. In March of that year, a win by the University of Maryland men’s basketball team over Duke caused students to take to the streets in celebration. As the celebration quickly got out of hand, officers from the Prince George’s County Police Department responded, including officers clad in riot gear and some mounted on horseback. According to police reports, one of the students confronted officers, verbally provoked and assaulted them, and then fought with them as they tried to detain him. However, several video recordings captured by students at the time showed something far different. The videos revealed the officers to be the aggressors and their use of what could be deemed excessive force. As a result of the videos, four officers were suspended and the criminal charges against the student were dropped.

A second event added more fuel to the fire. In April 2010, a Maryland State Trooper pulled over a motorcyclist for speeding. The motorcyclist had a video camera mounted on his helmet and he recorded the traffic stop. His video showed that the trooper, dressed in street clothes, got out of his car shouting, with his gun drawn. The motorcyclist was issued a speeding ticket but, because he was angry at the way he had been treated, he posted his video on YouTube. A few days later, Maryland State Police conducted an early-morning raid on his home, held him and his parents for ninety minutes, confiscated his computer, arrested him and took him to jail. The motorcyclist was charged with two felony violations of the Maryland Wiretap Act. The charges stemmed from the motorcyclist’s recording the trooper without his consent and his alleged possession of an “intercept device,” i.e., the helmet mounted camera. The outcry over the behavior of the Maryland State Police was fast and furious. In the midst of it, the criminal charges were dropped.

This event prompted a member of the Maryland House of Delegates to ask the Attorney General if the Maryland Wiretap Act applied to situations in which citizens recorded the public activities of police officers. In response, the Attorney General issued a letter of advice in July 2010. The Attorney General first concluded that the State Wiretap Act does not regulate video recording except to the extent that sound is recorded as part of the video. If so, the issue then becomes whether the recorded statements were part of a “private conversation” between officer and the citizen. If the recorded conversations were “private,” the Wiretap Act would apply. The Attorney General quickly pointed out, however, that most conversations between an officer and a citizen who is arrested or detained are not likely to be considered “private” and, therefore, protected by the Act. The Attorney General’s observation in this regard was, and remains, consistent with the holdings of courts in other states when construing their wiretap laws.

##### III.

That was 2010. Now, the issues surrounding the video recording of police activities have reached constitutional proportions, raising questions under the First, Fourth, and Fourteenth Amendments. These questions are being addressed case-by-case, court-by-court, jurisdiction by jurisdiction.<sup>1</sup>

The event in Maryland giving rise to consideration of the constitutional issues occurred at the 2010 Preakness. Christopher Sharp claims that officers of the Baltimore Police Department (BPD) “ordered” and “intimidated” him into surrendering the cell phone he used to record his friend’s arrest. When Sharp asked what would happen to the phone, he alleges that an officer told him “they’ll probably just erase it and give it back.” Sharp surrendered the phone, and, when it was returned, all video recordings — including not only the arrest — but also family videos had been deleted. As a result, Sharp sued (*Christopher Sharp v. Baltimore City Police Department, et al.*, Civil Action No. 11-cv-02888-BEL), alleging that the BPD has a policy, custom, or practice of enabling its officers to engage in unlawful acts against those who video record them in public. These unlawful acts allegedly include threats, unlawful arrests, and destruction of personal property.

<sup>1</sup> See *Glik v. Cunniffe*, 655 F. 3d 78 (1st Cir. 2011), a case concerning the videotaping of police officers in public: “Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion of governmental affairs.’” (citation omitted).



The lawsuit has attracted the interest of powerful organizations including the American Civil Liberties Union of Maryland Foundation and the United States Department of Justice (DOJ). On January 10, 2012, the DOJ filed a “Statement of Interest” in the case, asserting:

“This litigation presents constitutional questions of great moment in the digital age: whether private citizens have a First Amendment right to record police officers in the public discharge of their duties, and whether officers violate citizens’ Fourth and Fourteenth rights when they seize and destroy such recordings without a warrant or due process.”

Let there be no confusion as to where DOJ stands: “The United States urges this Court to answer both of these questions in the affirmative.” DOJ continued:

“The right to record police officers while performing duties in a public place, as well as the right to be protected from the warrantless seizure and destruction of those recordings, are not only required by the Constitution; they are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily.”

The *Sharp* case is proceeding in the United States District Court. That doesn’t mean that BPD has not acted in response. Knowing that the lawsuit was coming, BPD initiated Roll Call Training on the topic of “Wire Tapping Law” and the recording of police officers while they perform their official duties. That training, given in August 2011, made clear to BPD members that it is lawful for a person to videotape activities by a police officer in a public place and in the course of the officer’s regular duty. The training further explained the scope of the Maryland Wiretap Act and why it does not apply in the majority of police-citizen encounters. The lawsuit by Christopher Sharp came two weeks later. BPD then repeated the Roll Call Training and transmitted a department-wide email on the same topic. An additional training for all active sergeants was conducted in early October. Finally, on November 8, 2011, the BPD promulgated General Order J-16 which affirms the right of individuals to observe, photograph, and/or video record the official public duties of any member of the BPD. Police Academy trainees are now being trained on General Order J-16, and current officers will review the Order during their annual in-service training.

Despite the response of the BPD, the lawsuit continues. BPD’s motion to dismiss was denied on February 17, 2012. In denying the motion, the court observed that the parties have agreed that the public has a right to take photos and videos of police discharging their official duties, but that the exercise of the right “may be limited by reasonable time, place, and manner restrictions.” The court also said that any right not to have one’s picture taken in public, if such right exists, does not extend to police officers performing their official duties.

#### IV.

We knew at the start how many words a picture was worth. Now, for the law enforcement community, the question is whether that same picture is worth a thousand lawsuits. The answer must be a resounding “no.” Just one day after the BPD released General Order J-16 to the public, yet another video surfaced on YouTube, and was broadcast on the local news, showing BPD officers’ seemingly violating their own general order. Fertile ground for yet another lawsuit. As a consequence of just how quickly these matters are winding up in court, now is the time to carefully examine what your department is or is not doing as a result of the issues raised here. The questions come quickly:

- Are you considering a directive similar to that adopted by BPD? If not, why not?
- Do your patrol officers and supervisors know how to respond in circumstances where they are being recorded?
- What training are you providing to address these issues?
- Are officers being trained that a warrant is necessary before seizing or searching a recording device unless an exception to the warrant requirement (including consent) applies?
- What reasonable time, place, and manner restrictions, if any, have you placed on a citizen’s “right” to record officers performing their public duties?

If you address these questions now, you will be in a much stronger position if and when the lawsuit comes. Until it does, all officers should assume that the public is watching and the camera is recording.

#### **Excerpts from Baltimore City Police Department General Order J-16**

Upon discovery that a bystander is observing, photographing, or video recording the conduct of police activity:

1. DO NOT impede or prevent the bystander’s ability to continue doing so based solely on your discovery of his/her presence.
2. DO NOT seize or otherwise demand to take possession of any camera or video recording device the bystander may possess based solely on your discovery of his/her presence.
3. DO NOT demand to review, manipulate, or erase any images or video recording captured by the bystander based solely on your discovery of his/her presence.
4. For investigative purposes, be mindful of the potential that the bystander may witness, or capture images/video of events considered at some later time to be material evidence.
5. BEFORE taking any police action which would stop a bystander from observing, photographing, or video recording the conduct of police activity, Officer(s) must have observed the bystander committing some act [deemed criminal, such as obstruction, disorderly conduct or interfering with an officer’s lawful duties.]

John F. Breads, Jr.  
Director of Legal Services, LGIT

*Our Mission—Providing insurance and risk management services at stable and competitive rates through an organization that is owned and managed by its Maryland local government members.*

## Training/Seminar Classes

### March

#### **Regional Workshop - Aberdeen**

March 22, 9:00 AM - 2:00 PM @ Aberdeen City Hall, Council Chambers

#### **Flagger Training - Talbot County Community Center**

March 29, 9:00 AM - 1:00 PM @ 10028 Ocean Gateway  
Lunch will be provided.

### April

#### **Regional Defensive Driving Course - Tri-County Council Lower Eastern Shore**

April 3, 8:30 AM - 3:30 PM @ 31901 Tri-County Way  
Lunch will be provided.

#### **Respectful Workplace Training - Charles County**

April 26, 9:00 AM - 12:00 PM @ Charles County Government Building

**General Information** — 800-673-8231 or 443-561-1700

**Online Registration** — <http://www.lgit.org>

(click the Registration button under the LGIT logo)

**FAX Registration** — Attn: Michelle Yannone, 443-561-1701

## LGIT Congratulates

**Town of Bladensburg** – for its comprehensive safety policy program that compares the town's municipal policies with Federal and State regulatory requirements to affirm complete compliance.

**Cecil County** – for its outstanding self-inspection program that is improving safety and reducing liability.

**Queen Anne's County** - for hosting a regional Employment Update class covering FLSA, FMLA & ADA changes and requirements. The class was presented by Kevin Karpinski, Esq.



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## Maryland Local Government Health Cooperative

Learn about a new alternative for health insurance coverage available only to Maryland local governments. Go to [www.lgit.org](http://www.lgit.org) and click Health Coop on the home page.



### Current Cooperative Members

City of Brunswick  
City of Gaithersburg  
Kent County  
Local Government Insurance Trust  
Maryland Municipal League  
Town of Middletown  
Town of Port Deposit  
City of Westminster

### Key Program Advantages

- ⇒ You can choose your own plan design.
- ⇒ Your costs will be the same every month.
- ⇒ You may become eligible to receive money back.

### More Information

For more information or to get a quote today, contact LGIT Human Resources Manager Marsha Carpenter at 800.673.8231 or BENECON Senior Consultant Robin Richardson at 888.400.4647.