

# The LGIT News

Addressing the Needs of LGIT Members

Summer 2013

## Tim's Corner

Spring has sprung and the days are getting longer. The grass has turned green, leaves have populated the trees, and many flowers are in full bloom. Spring is the time of year when our members are finalizing budgets and looking for ways to cut costs.

In the four budget cycles since I became LGIT's Executive Director, we have been able to assist you in cutting costs. In fact, over the last five years, your entity has received a year of free insurance. How was this done? It was quite simple. LGIT takes in approximately 16 million dollars annually in premiums. Since 2009, LGIT has returned that same amount in the form of premium credits. However, due to a spike in claims costs, most of you will experience an increase in the amount you pay for property and liability insurance in FY14. Rates had to be raised an average of 6% over all, and premium credits had to be reduced for us to continue our credit program. Remember, our goal is to return our members' equity in a responsible manner over the long-term. The longevity

and loss control credit programs are being funded at the same level, but the rate stabilization credit had to be reduced by a third. That is not a "bad deal," because, even with the increase, LGIT's rates are competitive with the commercial market and the additional services we provide place us far ahead of our competition.

Beginning with this newsletter, we will emphasize these services. To promote this objective, Larry Bohlen has written a column that features one of the many value added services available to our members. A different service will be featured in each newsletter. If you haven't used or heard of these services, or taken advantage of the advice given, I urge you to contact Larry. The service featured in this newsletter is a training program available to all members (live or through our website) "Unlawful Harassment in the Workplace." John Breads, our Director of Legal Services, created this program and Matt Peter, one of our outstanding in-house attorneys, has updated it and presented it across the state. If you haven't invited Matt to your locality, I urge you to do so.

Again, thank you for placing your trust in LGIT. If you have any suggestions for future newsletter articles, please e-mail me at [TAilsworth@lgit.org](mailto:TAilsworth@lgit.org). I look forward to hearing from you.

Tim Ailsworth  
Executive Director, LGIT

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## What to Pray and What Not to Pray (at Legislative Sessions), That is the Question

*Joyner v. Forsyth County*, (U.S. Court of Appeals for the Fourth Circuit), July 29, 2011

In Forsyth County, North Carolina, meetings of the County Board of Commissioners historically began with an invocation delivered by a local religious leader. And, at almost every meeting, that prayer usually closed with the phrase, “For we do make this prayer in Your Son Jesus’ name, Amen.” The prayer also made references to specific tenets of Christianity, from “the Cross of Calvary” to the “Virgin Birth” to the “Gospel of the Lord Jesus Christ.” Janet Joyner and Constance Lynn Blackmon attended the meeting of the Board of Commissioners on December 17, 2007. They took offense, because the overall atmosphere made them feel distinctly unwelcome and coerced by their government into endorsing a Christian prayer. They sued in federal court, alleging that the prayer they had heard represented one instance of the Board’s broader practice of sponsoring sectarian opening prayers at its meetings. The federal district court agreed, finding that the Board’s “legislative prayer” violated the Establishment Clause of the First Amendment by advancing and endorsing Christianity to the exclusion of other faiths. The county appealed to the United States Court of Appeals for the Fourth Circuit. That court affirmed the judgment of the federal district court. In doing so, the

court relied on its own prior decisions as well as decisions of the United States Supreme Court, which held that, to survive constitutional scrutiny, invocations must consist of the type of nonsectarian prayers that solemnize the legislative task and seek to unite rather than divide.

No one questions the fact that the historical roots of “legislative prayer” are deep. There is a clear line of precedent not only upholding the practice, but acknowledging the ways in which it can bring together citizens of all backgrounds and encourage them to participate in the workings of their government. Despite this history, however, clear boundaries must be drawn to separate church and state. In short, prayer immediately before the conduct of official government business cannot create an environment in which the government prefers—or appears to prefer—particular sects or creeds at the expense of others. To this end, courts, as did this one, urge prayer to embrace a non-sectarian ideal that recognizes the similarities of different creeds—not their differences.

This issue, including a discussion of the pending Supreme Court case (*Greece v. Galloway*), is explored in more detail in LGIT’s recently published Claims Brief. If you haven’t seen it, look for it at our website.

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

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## Increased Fire Risk From Playground Softening Agents

In the last year, several LGIT members have experienced property losses of playground equipment due to fire. Two playgrounds destroyed earlier this year were total losses estimated at nearly \$200,000.

Although in nearly all cases the fires were intentionally set, additional factors may have contributed to the severity of the fires and the resulting costly losses.

Modern playground design includes the installation and maintenance of ground “softening agents.” These materials make slips and falls less hazardous for children. Long gone are the days of swings and monkey bars on asphalt or concrete. While greatly reducing the possibility of injury and liability claims from slips and falls, ground softening agents have created some unforeseen dangers. Often taking the form of wood chips or rubber mulch, these softening agents can be highly flammable. Couple quick igniting capability with plastic/fiberglass/wood playground equipment, and one quickly understands how easy it is to sustain a major fire loss.

*Consumer Reports* recently reviewed rubber mulch and wood chip products used as playground surfaces. Their test results showed that both are flammable, with rubber burning hotter. Further research at Ohio State University’s Agricultural Technical Institute revealed that rubber mulches are a considerable fire hazard. While some types of mulch, such as cocoa hulls, were difficult to ignite, other material, like shredded rubber, produced flames within a minute and

proved very difficult to extinguish. The Institute also found that organic (wood chip) mulch fires were uncommon. Wood chips are difficult to ignite, and, once ignited, they burn slowly.

Composted native mulches and compost have very low carbon-to-nitrogen ratios. For a fire to burn hot and to spread, it must have a very high carbon-to-nitrogen ratio (i.e. raw wood, lumber, rubber, etc.), since carbon combining with oxygen provides the energy source.

One rubber mulch website claimed that rubber mulch from tires was not flammable. This is untrue. Anyone who has seen a tire burn knows that the petroleum based material will burn intensely until it has exhausted its fuel source. In addition to fire, there are several other concerns with using this type of material.

### RUBBER MULCH:

- is not as effective as other organic mulch choices in controlling weeds
- is highly flammable and difficult to extinguish once ignited
- is permanent unlike other organic substances that decompose
- is toxic as it contains a number of metal and organic contaminants with known adverse environmental and/or human effects.

LGIT advises our members that there are viable and safer alternatives than rubber mulch when choosing a playground softening agent. These materials are just as effective and create less potential for fire and environmental hazard. Wood chips, cocoa hulls, and even sand are just

a few of the alternatives. If rubber is used, the interlocking rubber matting designed for outdoor use is a superior product and is much more difficult to ignite than shredded rubber chips.

If wood chips are used, take these precautions:

- Inspect the area and remove any potentially flammable materials before placing the wood chips down
- Lay the wood chips loosely on the surface
- Remove all weeds, grass and other vegetation from the area surrounding the wood chips. Do not use an open-flame weed burner when removing vegetation
- Do not cover a playground that is longer than 150 meters with wood chips unless hoses are installed that can reach both ends (Otherwise, you will not have the capacity to extinguish a fire in every area of the playground)
- Erect signs throughout the playground warning adults about the dangers of flammable materials coming into contact with the wood chips

LGIT hopes that our members examine their facilities so that they can continue to provide a safe and risk free environment for your citizens’ enjoyment.

Larry Bohlen  
Member Services &  
Education Manager, LGIT

## Scope Changes and Renewal Reminders for FY14

Thank you for renewing your coverages with LGIT. It is our pleasure to serve our Member Local Governments. This article highlights the scope changes and renewal reminders for the FY14 coverage year.

First are the Property & Liability Scope Changes that were emailed with your renewal applications.

### PRIMARY LIABILITY PROGRAM

#### Cooperation Condition (pp. 2-9)

Paragraph B (Cooperation) in the Conditions Section of Coverage Part II Law Enforcement Legal Liability (Wrongful Acts) and Coverage Part III Public Officials Legal Liability (Errors and Omissions), which required the Trust to obtain a member's consent before settling a claim or lawsuit under these coverage parts, is deleted.

#### Sewer-Related Discharge Endorsement (p. A-8)

The requirement that a member, as a condition of coverage, comply with risk management guidelines is deleted.

### PROPERTY PROGRAM

#### Underground Piping and Sewers (p. 10)

The Trust will pay no more than \$50,000 in the aggregate for loss or damage to underground piping and sewers in a single Coverage Period, regardless of the number of

#### Occurrences in that Coverage Period. Unmanned Aircraft Coverage (p. 12)

The Trust will cover loss or damage to unmanned Aircraft by covered causes of loss with no deductible but subject to a limit of \$2,500 per Occurrence.

#### Flood Cause of Loss (p. 18)

At the option of the member, coverage is available for loss or damage to Autos and Mobile Equipment and for Time Element caused by or resulting from Flood.

#### Flood and Earth Movement Exclusion Endorsement (p. A-22)

At the option of the member, loss or damage to Autos and Mobile Equipment may be excluded from optional coverage for loss or damage caused by or resulting from Flood or Earth Movement. This coverage exclusion applies to loss or damage to Autos and Mobile Equipment regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

In addition to the scope changes, below are very important renewal reminders, some of which we presented at the LGIT Renewal Workshops.

1) Flood & Earthquake: This is an optional property coverage that must be requested on your property application. The limit is \$5 million subject to your standard property deductible. However, the 100 year flood zone (ie. A or V) is the greater of your standard property deductible or \$25,000. A separate Flood Zone

A schedule exists in addition to your regular Flood schedule. However, Flood Zone A or V structures must be identified and included on this schedule for coverage. Our loss control team can assist you in identifying your Flood Zone A or V buildings if necessary.

2) Boiler & Machinery: We are providing this very important coverage with a \$10,000 deductible at no charge (FREE) for your covered buildings. Lower deductibles are available for additional premium. This coverage is through Chubb Insurance, which includes your State required inspections. Basically, this covers mechanical/electrical breakdown of your steam equipment, HVAC, telecommunication equipment, refrigeration equipment, compressors, other fire d and unfired pressure vessels, water and sewer equipment, and lift and pump stations. Remember to notify LGIT of all new buildings and equipment for inspections.

3) Excess Coverage: We also are providing this important coverage at no charge (FREE) for the first \$1 million limit. Higher limits up to \$5 million are available for additional premium and are highly recommended. We recommend the \$5 million limit as the Local Government Tort Claims Act (LGTCA) does not cap federal constitutional or civil rights lawsuits against you filed in state or federal courts, and the LGTCA liability limit does not include defense costs or punitive damages. Therefore, the sky is the limit, so to speak, regarding certain liability claims and lawsuits.

4) Hurricanes: Hurricane season is officially June 1st to November 30th. The main perils to insure against and to implement loss control measures are wind, rain and flood. Please contact your underwriters for flood coverage if you do not have this optional coverage, and please do not wait until the last minute when a hurricane is approaching, as it may be too late for immediate coverage. Also, please remember to contact your loss control representative for any measures that you can implement to prevent or reduce losses.

5) Arson & Brush Fires: While the summer season brings the beach and fun, it also brings increased fire losses primarily resulting from arson and brush fires. Note that arson losses nationally have been higher than normal. The good news is that LGIT helps provide our Property members financial assistance in that your LGIT Property Coverage provides an automatic \$5,000 Arson Reward reimbursement that our members have paid for information leading to the conviction for an act of arson that resulted in a loss to your covered property. Furthermore, basic loss control measures, such as increased security especially for vacant and abandoned buildings and clearing of excessive brush, help to prevent or reduce fire losses. Please remember to contact your loss control representative for further loss control measures.

Here's hoping for a fun and safe summer.

Scott Soderstrom CPCU, ARMP  
Underwriting Manager, LGIT

## Did You Know?

That among the wide variety of loss control related training that LGIT offers, it conducts Harassment in the Workplace training?

Have your employees, staff, and even elected officials had this important training?

Workplace harassment is no longer confined only to just sexual harassment. In fact, the Equal Employment Opportunity Commission (EEOC) has seen a marked reduction in sexual based harassment claims. As these types of claims have been decreasing, others based on religion, race and other characteristics protected under Title VII are on the rise. LGIT staff attorney Matthew Peter has been crisscrossing the state providing this type of training to our members.

In FY 2013, Matt instructed more than 770 member employees. This important training is available to our members at no charge. It is also available as an on-demand training accessible on LGIT's website at <http://www.lgit.org/on-demand>.

LGIT hopes that all of our members will take advantage of this training, which can provide the first level of defense against a workplace harassment claim. To schedule a training session, call Larry Bohlen, Manager of Member Services & Education, at 443-561-1700.



## LGIT Calendar

### June

*Regional Defensive Driving Course - Kent County*  
June 19, 8:30 AM - 3:30 PM @ Parks Pool & Community Center

*MML Annual Convention - Ocean City*  
June 23 - June 26 @ Roland Powell Convention Center

*Basics of Risk Management (Academy Core Class) - Ocean City*  
June 24, 8:00 AM - 9:45 AM @ Roland Powell Convention Center

### July

*EVOC - Emergency Vehicle Operations Course - Sykesville*  
July 16, 7:30 AM - July 17, 4:00 PM @ Driver Training Facility

### August

*MACo Summer Conference - Ocean City*  
August 14 - August 17 @ Roland Powell Convention Center

## From the Employment Law Hotline (800.845.8055)

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 per employment issue. This member service is provided by LGIT, with the professional assistance of Karpinski, Colaresi and Karp, P. A. We have selected for publication one inquiry of interest that was posed through the Hotline.

**Question:** Is a local government permitted to tape record a closed meeting involving employee discipline? In this particular case, the employee waived the right to counsel and refused to submit a written statement, instead advising that he intended to make an oral statement at the meeting.

**Answer:** YES. The meeting can and should be recorded with the knowledge and consent of all in attendance.

General Information — 800.673.8231 or 443.561.1700

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

FAX Registration — Attn: Michelle Yannone, 443.561.1701

For up-to-date calendar information, go to [www.lgit.org](http://www.lgit.org) and click on Upcoming Events

## 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



Join the growing number of Maryland Local Governments that have discovered the best option for their health insurance needs.

### Current Cooperative Members

- City of Aberdeen
- City of Brunswick
- Town of Chesapeake Beach
- City of College Park
- City of Gaithersburg
- Town of Hampstead
- Kent County
- LGIT
- Maryland Municipal League
- Town of Middletown
- City of New Carrollton
- Town of Port Deposit
- Town of Upper Marlboro
- City of Westminster

### Key Program Advantages

- You can choose your own plan design
- Your costs will be the same every month
- Modified Self-funding without the risk = opportunity to receive money back

### More Information

For more information or to get a quote, contact Michele Keplinger, Member Services Associate at **800.673.8231**.

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