

The LGIT News

Addressing the Needs of LGIT Members

Spring/Summer 2015

Tim's Corner

As you all know, the General Assembly increased the liability limits in the Local Government Tort Claims Act from \$200,000 to \$400,000 per individual claim and from \$500,000 to \$800,000 per total claims that arise from the same occurrence. While I am not happy with the increases, it has been twenty-eight years since the original limits were established. LGIT monitored the legislation's progress and worked hard to defeat it. We paid our actuary approximately \$7,500 to provide MML and MACo with three different studies. These studies were used by the General Assembly's study group to determine the financial impact of increasing the liability caps on local governments. In the end, we were unable to prevent the General Assembly from passing the legislation.

How will the increase impact your insurance rates?

I have been asked this question many times since the bill was passed. First, there is no way to know conclusively what effect the

increases will have. Our actuary, however, has opined that the Trust will need approximately 3.1% in additional money to cover liability claims in the upcoming fiscal year. This increase is in addition to the 1.8% needed because of past claims history and inflation. Overall, we approximate that the liability pool will need an increase of just under 5% to cover claims in the upcoming fiscal year. I wish I were the bearer of better news, but it is critically important to assess the legislation's impact now rather than later.

As always, LGIT appreciates your business, and we are always working hard to serve you.

Thank you,

Tim Ailsworth
Executive Director, LGIT

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From the Boardroom

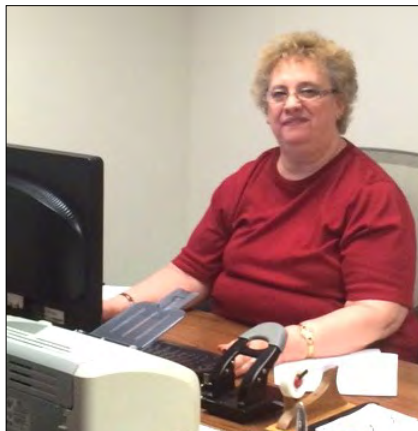
The Board of Trustees met on March 23, 2015, and took the following actions:

- Approved the Underwriting Committee's recommendation to broaden and clarify the coverage for Takings (*i.e.*, eminent domain) to include: economic damages (zoning, civil rights and constitutional) and to provide a \$1M limit of liability, inclusive of indemnity and defense costs.
- Approved the Underwriting Committee's recommendation to broaden the EPLI (Employment Practices Liability Insurance) coverage to include damages (front pay for violating civil or constitutional rights from termination, refusal to employ, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination).

Employee Spotlight — Carol Stallings

Carol started working at LGIT as a temporary placement in April 2000. She was hired as a full time employee in August 2000. She is our Senior Administrative Assistant, supporting every department at LGIT. The Administrative Department has changed quite a bit over the years. Originally, there were 6 employees supporting LGIT staff with an administrative assistant assigned to specific departments. Now, there are two employees sharing the work for the entire company. You can just imagine how much staff depends on Carol's experience and institutional knowledge.

Carol was born and raised in Baltimore. After graduating from Western High School and starting a family, Carol took her first full time job as a secretary at Union Trust Bank. After several other jobs, both in state and out, Carol took a secretarial position with the Office of the Attorney General (Civil Division). She was also a legal secretary in the private section before coming to LGIT.



Carol has also served the Howard County Board of Elections since 2000. She began as a Book Judge, and was then promoted to Voting Unit Judge. She is now a Chief Judge. When asked about her interest in the voting process, Carol explained that, while taking classes at Howard Community College, one of her instructors encouraged her to apply. She has been there ever since.

Carol and her husband, Ronnie, have been married for 10 years. Ronnie has worked for the Howard County Department of Public Works for the past 8 years. Carol has one son, Philip, and two grandchildren, P.J. and Celeste.

In her free time, Carol likes to travel and loves walking her dog, "Lucky."

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General Assembly Makes Major Changes To Local Government Tort Claims Act

Maryland's Local Government Tort Claims Act (LGTCa) underwent major changes in the General Assembly's 2015 Legislative Session. The changes impact not only the State tort liability limits of local governments, but also the period of time in which a



claimant can put the local government on notice of a claim.

As with all legislation, some believe the changes made by the General Assembly were long overdue; some believe just the opposite. Regardless of one's personal views of the changes, they are now the law (or will be as of October 1), so we may as well understand them.

The basic purpose and structure of the LGTCa remain unchanged. The LGTCa was enacted in 1987 to provide a remedy for members of the public who are injured by tortious acts of employees of local governments. It requires that local governments in Maryland defend lawsuits resulting from torts committed by its officers and employees within the scope of employment. In exchange for this obligation to defend and indemnify employees, liability limits were established in the LGTCa. Since 1987, the liability limits for local governments have been \$200,000 per an individual claim, and \$500,000 per total claims that arise from the same occurrence. After 28 years, however, those limits have been changed by the General

Assembly. Effective October 1, 2015, the new State tort liability limits for local governments will be \$400,000 per an individual claim and \$800,000 per total claims arising from the same occurrence. These figures certainly cannot be deemed excessive when compared to the vast majority of State liability statutes across the United States.

The second major change made by the General Assembly concerns the notice provision in the LGTCa. For decades, the LGTCa required claimants to provide notice of their claims to local governments within 180 days of the date of injury. This was to enable local governments to investigate claims while the evidence was still fresh and the recollection of the witnesses was undiminished by time. Effective October 1, however, claimants will be given one year in which to provide written notice of their claims. Although this is the same time period established in the Maryland Tort Claims Act, the argument can be made that, as more time passes, it simply becomes more difficult for local governments as opposed to the State to adequately investigate claims of wrongdoing. Be that as it may, the new notice period is one year, and that will result in notice of claims coming in later rather than sooner.

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

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 recent inquiry of interest.

Question: Can an employee refuse to work overtime if his or her local government employer only offers compensatory time as opposed to time and a half?

Answer: YES, the employee can refuse to work overtime. Under the Fair Labor Standards Act (FLSA), employees must agree in advance to receive compensatory time in lieu of overtime compensation. If the local government only offers compensatory time, employees do have the right to refuse to work overtime.

Scope Changes & Value Added Coverages for FY16

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 FY16 coverage year. Please refer to your Scopes of Coverage for complete details.

Primary Liability Program

- Injured Workers Exclusion (p. 1-10)

The Trust will not provide coverage for any obligation of member under the Federal Employers' Liability Act, the Jones Act, or the Longshoremen's and Harbor Workers' Compensation Act.

- Airport Exclusion (p. 1-13)

The Trust will not provide coverage for Personal Injury or Advertising Injury arising out of activities at an airport operated, maintained or controlled by member. The Trust will not provide coverage for administrative decisions of member relating to an airport operated, maintained or controlled by member.

- Cyber Liability Exclusion (p. 1-16)

The Trust will not provide coverage for any Claim or Lawsuit arising out of (i) any access to or disclosure of a member's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information, or (ii) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if Damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other cost, loss or expense incurred by a member arising out of the items or events described in the preceding paragraph.

- Employment Relationship (p. 3-7)

The Trust will provide coverage for a Claim arising out of a refusal to employ, the termination of employment, or coercion, demotion, evaluation, reassignment, discipline, defamation, Harassment, humiliation, or discrimination in the employment relationship between member and member's Employee.

- Taking (p. 3-7)

The Trust will provide defense costs and indemnification coverage, including Attorneys' Fee Award, up to, but not to exceed, \$1,000,000 per Wrongful Act for any Damages arising out of or in any way connected with the operation of the principles of eminent domain, adverse possession, dedication by adverse use, inverse condemnation, or condemnation proceedings, by whatever name used, including federal or State constitutional or statutory Claims arising from member's land use or zoning decisions.

- Auto Physical Damage Limit of Liability (p. 4-17)

For Autos that are less than 3 years old, computed from the date of manufacture as determined by the original serial number, the most the Trust will pay for Loss in any one Accident is the lesser of the replacement cost value of the damaged or stolen property as of the time of the Loss or the cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

For Autos that are 3 years or older, computed from the date of manufacture as determined by the original serial number, the most the Trust will pay for Loss in any one Accident is the lesser of the actual cash value of the damaged or stolen property as of the time of the Loss or the cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- Defense Costs in Civil Cases Seeking Equitable Relief Endorsement (p. A-16)

Subject to a maximum reimbursement of \$10,000 per case, the Trust will reimburse member for reasonable defense costs, including attorney fees, which are incurred by member in civil cases involving Claims, demands or actions seeking relief or redress in any form other than money Damages. A request for reimbursement must be made within 30 days from the conclusion of the civil case, including termination of all appeals.

Excess Liability Program

- Employee Benefits Liability (p. 4)

Coverage will be afforded for Loss caused by a Wrongful Act in the Administration of Employee Benefits Programs.

Property Program

- Personal Property of Employees and Volunteers (p. 5)

Coverage of the Personal Property of member's Employees or Volunteers while such Personal Property is used in member's operations or on member's Premises is subject to a limit of \$2,500 per Occurrence unless a higher limit is selected.

- Valuation of Autos (p. 31)

Autos that are 3 years or older, computed from the date of manufacture as determined by the original serial number, will be valued at Actual Cash Value.

- Cyber Liability Exclusion (p. 18) (see Cyber Insurance Program)

The Trust will not pay for loss or damage caused by, resulting from, or arising out of (i) any access to or disclosure of a member's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information, or (ii) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other cost, loss or expense incurred by a member arising out of the items or events described in the preceding paragraph.

FREE Cyber Insurance Program:

Since cyber coverages are excluded, LGIT offers free cyber insurance for all members upon completing the five (5) question Cyber Insurance Application during open enrollment on the LGIT website at <http://md-lgit.civicplus.com/index.aspx?NID=727&ART=1832&ADMIN=1>.

FREE Boiler & Machinery:

LGIT is 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 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.

FREE Excess Coverage:

LGIT is 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

With these kinds of savings, let's enjoy a fun and safe summer.

Scott Soderstrom CPCU, ARMP
LGIT Director, Underwriting Services



Last April, Scott Soderstrom, LGIT Director of Underwriting Services, instructed members at the Policy Year 2016 Regional Workshop at LGIT Offices.

Sewer Systems Out of Sight, Out of Mind — A Member Case Study

A toilet or a sink is often a tempting receptacle for trash. Few people, however, give any thought to where waste goes or how it gets there. A waste water system is an open system and is vulnerable to *anything* that is deposited in it. Bulky paper products, grease, and roots all can cause main system stoppages. Other issues such as the topography (low spots in the system) and age of pipes can cause slowdowns or backups. When this happens, we know what's next and the picture is neither pretty nor healthy. Raw untreated sewerage enters the home or business, and, at a minimum, causes emotional upset and great exposure.

All of these problems were addressed by a LGIT member town this year. **FOG** (fats, oils and grease) were beginning to slow, and, ultimately blocked, parts of the town's waste water system. With its years of loss experience, LGIT knows that frequency inevitably begets severity. The town's problem was spiraling out of control and caused repeated closures at a professional office. The property was repeatedly damaged by backups. The cause was determined to be FOG. The potential liability costs included loss of revenue, inability to lease the premises, and to possible structural damage (resulting in decreased property value). Since the town had no protocols or service records, liability was a foregone conclusion. After the last backups, the town knew it had to do something and it did. The situation was corrected and future loss prevented.

How did they do it?

The town's new public works director created and documented appropriate policies and procedures for both preventive and routine maintenance. Priorities were established, trouble spots identified, and the town's officials supported the efforts by drafting and adopting a FOG Ordinance, and assuring that needed funds were appropriately earmarked. The ordinance is vigorously enforced, and it includes provisions allowing for waiver hearings to provide citizen relief in limited circumstances. Going further, the town retained a consultant from the Washington Suburban Sanitary Commission with FOG expertise and instituted an education program for the public works staff. The



town's Water and Sewer Commission prepared and recorded a presentation entitled "Respect Your Sewer and It Will Respect You". This webinar is available on the town's website.

These steps can be replicated by any local government. But what about the cost? The town realized that fiscal forces play a role, and changes like these would have to be done piecemeal, as budget cycles allowed.

Keeping this in mind, a solution such as this one will yield results. Starting with the smallest steps will put your loss control efforts on the right course. The benefits will become apparent with the passage of time.

If you have any questions about this or any other loss control subject, please contact your Loss Control representative at LGIT or Larry Bohlen, Senior Manager of Field Services at lbohlen@lgit.org

Vance Petrella
Manager, Loss Control Services
LGIT

Tenant User Liability Insurance Program (TULIP)

Now that summer is here, many local governments are busy preparing for summer celebrations and special events. These events bring communities together. Local governments play an important role in facilitating these events by allowing the public to use streets, parks, fields and other facilities. Individuals and organizations that use local government facilities are not covered under the local government's insurance program. This creates the possibility of the local government becoming drawn into unnecessary claims. The solution to this dilemma is the Tenant Users Liability Insurance Program (TULIP). The TULIP is a low-cost insurance policy that protects both the "Tenant User" and the local government. A "Tenant User" is any outside party using a local government's facilities. The policy applies to bodily injury or property damage arising out of the use of the local government's premises by "Tenant Users." Premium costs are traditionally paid by the "Tenant User."

What does TULIP cover?

TULIP provides \$1 million in liability protection for many types of events including:

- Receptions
- Festivals
- Clubs & Meetings
- Arts & Crafts
- Reunions
- Concerts
- Weddings
- Many more

Liquor liability coverage is also available.

How does TULIP work?

Individuals purchase coverage online from HUB International through Entertainment Brokers International (EBI) website. After event information is entered into the secure website, an instant quote is generated, and the policy can be purchased with a credit card. Costs are based upon the event type, number of people, level of risk, length of the event, special requirements and amount of coverage needed. **A Certificate of Insurance is sent to the purchaser and the local government via e-mail.**

Individuals and groups who use local government facilities are often unaware that they can be held legally and financially responsible for injury, accidents and property damage resulting from their event. TULIP keeps them protected.

- When a "Tenant User" decides to use a local government's property for an event, the facility management directs the "Tenant User" to <https://tulip.onebeaconentertainment.com/e/tulip/apply.aspx>. The facility manager provides the "Tenant User" with a Member ID code that identifies the local government (or use drop down menu by selecting "National League of Cities," then state of Maryland and city).
- Follow the online process to enter this ID code and answer a few basic questions about the event to receive an online quote.
- If "Tenant User" decides to purchase coverage through the program, they can simply enter their credit card information and secure the coverage online. A Certificate of Insurance is sent to "Tenant User." Another copy of the Certificate of Insurance is sent to the local government contact.

WHY SHOULD LOCAL GOVERNMENTS OFFER THIS COVERAGE?

- Addresses liability issues in a fast, affordable and convenient manner
- No cost to the local governments – "Tenant User" pays the premium
- Local government is named as an additional insured
- Certificates of Insurance are automatically e-mailed to all parties
- Safeguards local government's loss experience
- Ensures proper coverage
- Prudent risk management

Additional information regarding summer celebrations and special events can be found on LGIT's website at <http://www.lgit.org/TULIP>

For further information contact Ellen Nudd, Underwriter at 443-561-1700 or ellenn@lgit.org. You may also contact Susan Kludjian at 978-661-6662 or susan.kludjian@hubinternational.com

LGIT Calendar

JUNE — JULY

Equipment Breakdown & Boiler Maintenance-Talbot County

June 2, 9:00 AM - 4:00 PM @ Community Center-Wye Oak Rm., 10028 Ocean Gateway, Easton, MD 21601

Equipment Breakdown & Boiler Maintenance-LGIT

June 3, 9:00 AM - 4:00 PM @ 7225 Parkway Drive

Equipment Breakdown & Boiler Maintenance-City of Hagerstown

June 9, 9:00 AM - 4:00 PM @ Washington County Free Library, 100 South Potomac St., Hagerstown, MD 21740

Regional Defensive Driving Course-Kent County

June 17, 8:30 AM - 3:30 PM @ Community Center, 11041 Worton Road, Worton,, MD 21678

Regional Defensive Driving Course-City of Takoma Park

June 18, 9:00 AM - 3:30 PM @ City Hall, Azalea Room, 7500 Maple Avenue, Takoma Park, MD 20912

2015 MML Annual Convention

June 28 - July 1 @ Ocean City Convention Center, Ocean City, MD

For up-to-date calendar information, go to www.lgit.org and click on Upcoming Events

General Information — 800.673.8231 or 443.561.1700
Online Registration — <http://www.lgit.org>
FAX Registration — Attn: Michelle Yannone, 443.561.1701



GOLD FIT-FRIENDLY WORKSITE

The American Heart Association recognizes employers who go above and beyond when it comes to their employees' health. There is no better benefit to offer employees than helping them lead healthier, longer lives.

The American Heart Association recognizes health conscious employers through its elite group of companies Fit-Friendly program. The Fit-Friendly program rewards employers who champion the health of

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 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 Centreville (7/1/15)
- Town of Chesapeake Beach
- Town of Chesapeake City
- Town of Chestertown
- City of College Park
- City of Cumberland
- City of Gaithersburg
- Town of Hampstead
- Kent County
- Kent County Public Library
- LGIT
- Maryland Municipal League
- Town of Middletown
- City of New Carrollton
- Town of Oakland
- Town of Poolesville (7/1/15)
- Town of Port Deposit
- Town of Sykesville
- Town of Upper Marlboro
- City of Westminster

Key Program Advantages

- Choose your own plan design
- 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 Specialist, at 800.673.8231.

their employees and who work to create a culture of physical activity and health in the workplace. Thanks to the hard work of LGIT's Wellness Committee, and the employees who participate in the wellness program, LGIT has earned the Gold Fit-Friendly Worksite award. As a Gold level award recipient, LGIT fulfilled key criteria and demonstrated a strong commitment to providing a healthy workplace for employees.

If you would like more information on starting a successful wellness program in your workplace, please contact Marsha Carpenter at LGIT.