

The LGIT News

Addressing the Needs of LGIT Members

Winter 2016

Local Government Insurance Trust Names Commissioner Debra Davis, Esq., as Board Chair Davis becomes first African-American LGIT Chair



Commissioner Debra M. Davis, Esq., (District 2), has been selected to serve as chair of the Local Government Insurance Trust (LGIT) Board of Trustees. Davis has served on the LGIT board for the past five years, acting as secretary the last two years. Her two-year term as chair began on Saturday, Dec. 19. She is the first African-American to serve as LGIT chair.

“It is an incredible honor to continue to serve LGIT in this new leadership role,” Davis said. “I look forward to being at the forefront of LGIT’s great work throughout the State of Maryland.”

Davis, a local practicing attorney, was first elected to the Charles County Board of Commissioners in 2010, and is currently serving her second term.

She serves on several statewide, regional, and local boards. Davis was recognized as one of Maryland’s Top 100 Women in 2012 and 2014 by The Daily Record for her leadership and community service. A consummate student of leadership, Davis completed the University of Maryland’s Academy for Excellence in Local Governance Professional Development program in August 2012. She is a 2009 graduate of Leadership Southern Maryland, and a 1999 Maryland State Bar Association Leadership Fellow. Davis served on the African-American Leadership Summit for the U.S. Congress in 2004.

Davis holds a Bachelor of Arts from the University of Maryland in Criminology and a Juris Doctorate from the University of Baltimore School of Law.

In her role as Chair of the Board of Trustees, Davis will lead and direct board meetings, working collaboratively with the executive director.

Charles County Government News Release



In This Issue

| | |
|--|-------------|
| LGIT Names Commissioner Debra Davis, Esq., as Board Chair | Cover |
| LGIT’s 28th Annual Meeting Photos | Pages 2 & 3 |
| Thank You to the Sponsors of LGIT’s 28th Annual Meeting | Page 3 |
| Preparing for Winter Weather—Liability & Property Issues | Pages 4 & 5 |
| Local Government Officials And Employees Charged With Crimes: Who (if anyone) Pays, When, and Why? | Pages 6 & 7 |
| Employment Law Hotline Q & A | Page 7 |
| Employee Spotlight—Hollis Henry | Page 8 |
| Maryland Local Government Health Cooperative | Page 8 |
| LGIT Calendar | Page 8 |
| CNA Boiler Log | Last Page |

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LGIT's 28th Annual Meeting Photos



2014-2015 Board of Trustees

Back Row (left to right) John Miller, Burgess of Middletown; Ted Zaleski, Director of Management & Budget Carroll Co.; Michael Sanderson, Executive Director MACo; Stewart Cumbo, Council Member Chesapeake Beach; Debra Davis, Commissioner Calvert Co.

Front Row: Scott Hancock, Executive Director MML; Michael Bennett, Mayor Aberdeen; John "Sonny" Bloxom, County Attorney Worcester Co.; Barbara Mathews, City Manager Rockville; David Deutsch, City Manager Bowie



LGIT Board Members and Annual Meeting attendees congratulate Commissioner Debra Davis as incoming Board Chair.



Annual Meeting attendees discover the secret to Stew Leonard's customer service success.

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LGIT Chairman Sonny Bloxom and Risk Management Committee Chairman Stewart Cumbo present the FY 2015 Lifesaver Award to Juan Thorpe, Town of Cheverly.



Members of the Maryland Local Government Health Cooperative met during the Annual Meeting.



Risk Management Committee Chairman Stewart Cumbo presented the FY 2015 Risk Management Awards to City of Westminster, Worcester Co., City of Salisbury, City of Bowie, City of Laurel, Cecil Co., Town of Bel Air, St. Mary's Co. and City of Mount Rainier.

Thank You to the Sponsors of LGIT's 28th Annual Meeting

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Preparing for Winter Weather --- Liability & Property Issues

As winter arrives, local government officials and their employees should turn their thoughts to keeping the streets and sidewalks clear of snow and ice and the host of other seasonal issues. Severe weather can occur in many forms. Rain, sleet, ice, snow, blizzards, or any combination of these is possible. Frequently, a change of only a few degrees in temperature can make the difference between a rainy winter day and a severe winter storm. These storms and their residual effects can disrupt services for local governments. Sometimes storms can occur in rapid succession, providing little time to recover. Therefore, always be prepared before the next winter storm strikes.

Winter weather can impact your buildings, fire protection systems, parking lots and walking surfaces. Specific winter exposures include:

- Building collapse
- Wind damage
- Water damage
- Frozen water mains, including pipes & sprinkler systems
- Slippery walking surfaces

The following is a list of preventive measures that can help protect local government facilities from winter weather:

General Preparations

- Establish contingency plans for staffing, fuel, equipment, fire protection, strategic shutdown, continued business, etc.
- Educate employees in how to control winter related hazards. Implement procedures and assign responsibilities.
- Assure that facilities' heating systems are in proper working order.
- Establish an emergency plan for use in the event of a winter-related loss.
- Implement an accident investigation program to investigate the source, cause and result of all property damage or personal injury claims. Don't assume liability. Photographs are a significant benefit to document conditions at the time of the incident/accident.

Sidewalk --- Snow & Ice Removal

- Develop written procedures for sidewalk maintenance

- Determine what will be done (e.g. shovel, ice-melt agents where needed, etc.).
- Determine who is responsible for completing each task
- Determine where the removed snow and ice will be placed. Keep snow piles arranged in areas which will not obscure critical lines of sight for both pedestrian and vehicular traffic.
- Determine who will check walking surfaces. Maintain adequate lighting in all entranceways. Eyesight can be significantly hampered by "snow blindness" when entering buildings.
- Document the times of shoveling and visual checks, and monitor conditions. Watch for refreezing as the sun sets.

In determining, whether a local government has acted reasonably, some of the circumstances to consider include: location, climatic conditions, amount of accumulation, impracticality of removal, amounts and character of traffic on the sidewalk, and the intended use for pedestrians.

Snow Blowers

Before beginning to remove snow, make sure that the area is clear. Some machines are capable of throwing snow 30 feet or higher. Snow removal machines can also propel rocks or other objects at great speed. Special care should be taken to discharge snow away from people, buildings, and vehicles. If an electric snow blower is used, be aware of the location of the power cord. A running machine should never be left unattended. Also, snow removal machines should not be refueled while they are running or when their engines are hot as there is a risk for burns --- engines and mufflers can get extremely hot.

Snow Plowing

Local governments are not immune from liability for injuries resulting from the negligent operation of a governmentally owned or operated snowplow. Therefore, careful operation is the objective. Plows should be used early, before snow becomes compacted. Local governments should adhere to snow removal policies, which establish the order in which streets and other areas are to be cleared. The busiest streets and emergency routes should be thoroughly cleared first. Top priority should also be given to schools, hospitals and industries. Secondary streets can be cleared later and not as thoroughly. It is also important to keep fire hydrants clear. Many municipalities have "adopt a fire hydrant" programs in which residents are asked to take responsibility for clearing snow and ice from fire hydrants.

In addition to plowing, salt and sand are also used to keep streets drivable. Due to its unfavorable environmental effects, salt should only be applied under proper conditions and in the correct amounts. In order to protect ground water and other water sources, salt storage must meet the State's Department of Transportation requirements.

Vacant, Abandoned and Unoccupied Buildings

Vacant, abandoned and unoccupied buildings are of special concern. They are vulnerable to roof collapse due to the weight of snow and ice loads. They also pose threats to public safety.

Roof Concerns

Local governments need to be cognizant of the danger posed by heavy snow loads on roofs, and the warning signs of potential structural weakness. In some instances, the risks posed by accumulated snow on roofs can be mitigated by safely removing the snow. Efforts should be made to safely remove snow from roofs. Such efforts will minimize the likelihood of structural collapse. Flat and low pitched roofs, most often found on industrial type buildings, pose the greatest risk of buckling under heavy snow and ice accumulations. Lower roofs, which are prone to snow drifts and blowing snow from higher roofs, are also vulnerable.

Here are some tips for removing snow and ice from roofs and other areas:

- Use a snow rake (available at most hardware stores) to remove snow from pitched roofs.
- Start from the edge and work your way into the roof.
- Shave the snow down to 2 or 3 inches instead of scraping the roof clean. This reduces the damage to shingles or other roof coverings. Keep in mind that any metal tool can conduct electricity if contact is made with a power line or other source of electricity. Also, metal tools can cause more damage to a roof.
- Shovel snow from flat roofs by throwing the snow away from the building. Plastic shovels are generally better for this task. The exception is plastic shovels with curved blades, as they can cause roof damage.
- Remove large icicles over doorways and walkways carefully.
- Wear protective headgear and goggles when performing any of these tasks.
- Keep gutters and drains clear and free of ice and snow.
- Keep downspouts clear at ground level.

These are just a few of the winter weather issues faced by local governments. For additional questions contact: Ellen Nudd or Scott Soderstrom.

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RISK CONTROL



In order to have a safe and reliable heating system, pre-season maintenance and inspection should be completed every year. Trained and licensed persons should complete all system maintenance. If using a contractor, verify the business is properly insured.

Heating systems come in many designs. Maintenance and testing requirements vary. Following the manufacturer's recommended maintenance scope and schedule is mandatory in many jurisdictions.

The lack or improper maintenance of heating systems can lead to frozen pipes, fire, boiler explosions, carbon monoxide poisoning and, in extreme cases, death. While preparing your boiler for the heating season, check the carbon monoxide detector, smoke detector, fire detection systems and extinguishers for proper operation and fitness for service.

Always keep a clear zone around all boilers and hot water heaters. Avoid using the boiler room as a storage space. Do not keep combustible or flammable materials in the room. Maintain installed emergency lighting.

Following is a list of tasks that your technician should be performing:

- Test and log the operation of all controls and safety devices, including all relief valves.
- Clean applicable heat exchange surfaces.
- Change system filters. This could be air or fuel system filters.

- Lubricate where required.
- Verify proper combustion. Flue gas analysis requires a trained technician with specialized equipment.
- Inspect all flue gas containing components, including the chimney.
- Inspect the electrical service for the equipment, including equipment grounding. Amperage draw should be noted for motors and/or heaters where applicable.
- Fuel storage and delivery systems should be inspected. If you store fuel oil, it should be tested for presence of water contamination.
- Where applicable, boiler feed system piping, tanks and pumps should be inspected.
- Humidification systems should be inspected.
- Fresh air intakes or louvers should be checked for general condition, especially blockage.

One item often overlooked when preparing the building for the heating season are the air louvers which are designed to introduce fresh air into the building. With this design, fresh air passes over heating coils just inboard of the louvers. In order to protect the coils from freeze damage, the correct operation of the louvers must be verified, including full closure. In extreme cold conditions, louvers that do not fully shut can result in frozen and burst heating coils. Lack of building heat can disrupt the work force leading to additional costs.

Last but not least, have your heating system checked weekly. Logs are required in many jurisdictions. Any testing or inspection work should be documented and a history maintained. A sample log is attached as a convenience and aid.

Local Government Officials and Employees Charged with Crimes: Who (if anyone) Pays, When, and Why?

An individual is arrested and charged with a crime. The person arrested retains a criminal defense attorney, at great expense, to provide representation in all proceedings, including trial. If there is a finding of “not guilty,” can the person seek reimbursement of the costs of his or her defense? Should there be such a right? Traditionally, the answer has been no, but, in a growing number of states, that is changing.

Statutes providing for some form of reimbursement of trial-level expenses to persons criminally prosecuted are becoming more common, though the statutory schemes are vastly different. One approach has been to pass laws allowing only certain public employees to recover legal costs from the government once the official is acquitted of a criminal charge. Seven states have enacted public-employee reimbursement laws — Louisiana, Mississippi, New Jersey, New York, Pennsylvania, Utah, and Virginia. Maryland has no such law. Ira P. Robbins, *The Price is Wrong: Reimbursement of Expenses for Acquitted Criminal Defendants*, 2014 Mich. St. L. Rev. 1251, 1262-1265, 1268 (2014).

As pointed out by Ira P. Robbins in *The Price is Wrong: Reimbursement of Expenses for Acquitted Criminal Defendants*, public-employee reimbursement laws typically share three characteristics: (1) they require that the employee be acquitted; (2) they require that the alleged misconduct arise out of the scope of employment; and (3) they apply to all public employees in any type of criminal proceeding. *Id.* at 1262-63. New Jersey and Pennsylvania’s laws also limit reimbursement to specific categories of public employees, such as judges, public educators, and municipal police officers. *Id.* at 1264-65. Virginia’s reimbursement law is limited to any trustee, advisory committee member, officer, or employee of the Retirement System for alleged securities violations. *Id.* at 1265-66.

Despite the absence of a reimbursement statute for trial-level expenses, Maryland does provide reimbursement to an acquitted defendant for certain expenses related to appellate proceedings, such as unsuccessful appeals by the State. *Id.* at 1268-69; MD. CODE ANN., CTS. & JUD. PROC. §12-302(c)(4)(vi); MD. R. 8-306(c).

The absence of a state statute does not prevent local governments from enacting local laws to address the reimbursement issue. However, any local government that has done so, or is considering doing so, must proceed wisely. The three factors identified above provide more than a worthy framework in which to proceed. First, should reimbursement (in whatever form it ultimately takes) be limited to actual acquittal of the criminal charge? What then happens if a public official, charged with multiple crimes, is acquitted of only one but found guilty of the others? What if the State’s

Attorney dismisses the charges through a *nolle prosequi*? What about mistrials or plea bargains? What if the local government employee is investigated by either the police, prosecutor, or grand jury, but no criminal charges are ever brought? Certainly, limiting reimbursement to acquittals and acquittals only limits the relief afforded by a reimbursement law. But the question to be decided by each local government is whether such strict limitation is necessarily a bad thing or whether it is a clear marker that the law is intended for strict and limited application only.

Second, and most understandably, any reimbursement law should be limited to acts allegedly committed by the official and/or employee in the scope of his or her public employment. Relief may also be afforded to board or commission members and volunteers. Scope of public duty/employment is the key. For example, an official charged with a private act of assault, battery, domestic violence, or theft, should not look to his or her public employer for reimbursement of trial-level expenses arising from defending against the charge. But a code enforcement officer charged with criminal trespass, or a municipal police officer charged with criminal assault, should, upon acquittal, be entitled to look to his or her employer for reimbursement of some, if not all, trial-level legal expenses, including attorney’s fees.

And what “costs” should be reimbursed? In this regard, any law governing reimbursement must specifically define “costs” and perhaps limit the dollar amount recoverable. At the criminal trial-level, costs most generally include witness fees (including expert witness fees and witness travel expenses), legal document fees (including court reporter fees), attorney’s fees, detention costs (this is rare because the State or municipality likely covers the subsistence costs related to detention), and even “loss of time” (for example, loss of earnings). These costs are generated at various stages of the criminal process, including pre-trial, during trial, on appeal, and during state post-conviction review. All of these proceedings should be included in reimbursement legislation.

Without specific definition, the courts will be called upon to decide which expenses are, and which are not, recoverable. If attorney’s fees are included in the law, they, obviously, are of the greatest concern. As such, the limitation of “reasonableness” should be imposed. In Washington State for example, the law encompasses attorney’s fees for public employees but limits them to the sum of (a) legal fees the defendant has paid in the past, plus (b) legal fees the defendant has become legally obligated to pay in the future.” Robbins, p. 1273-74. In Massachusetts, the “determination of what constitutes a reasonable fee...[is] measured according to what would be reasonable for private counsel to charge in the circumstances,” not according to the “the hourly rate paid to court-appointed counsel.” *Id.*, p. 1274.

Additionally, the “[c]alculation of reasonable hourly rates should begin with the average rates in the attorney’s community for similar work by attorneys of the same years’ experience.” *Id.*, p. 1274. The burden must be placed upon the official or employee seeking reimbursement to establish the reasonableness of the attorney’s fees requested. *Id.*, p. 1274.

Third, any reimbursement legislation should establish that it pertains to criminal proceedings in all charges, state or federal, all trial courts, state or federal, and even to all appellate courts, at least as to the costs of appellate proceedings not encompassed in Maryland’s existing law.

Since the cost of “reimbursement” will ultimately be borne by the taxpayer, legislators must proceed cautiously, and openly, in their consideration of a reimbursement law. We must all realize, however, that no such law, no matter how carefully crafted, can ever make the acquitted official or employee whole. To know this, one need only recall the question asked by Ray Donovan, Ronald Reagan’s former Secretary of Labor, after his criminal trial in 1987. After being acquitted in a highly publicized larceny and fraud case unrelated to his government service, Donovan was famously quoted as asking, “Which office do I go to to get my reputation back?” While reimbursement of expenses may not be able to restore reputation, it can aid vindicated defendants, including local government officials, officers, and employees, who have endured financial burden and hardship in defending themselves in the criminal justice system.

John F. Breads, Jr.
Director of 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: How many hours may a law enforcement officer work consecutively without downtime for sleep?

Answer: Due to the nature of police work, there are NO state or federal regulations limiting the number of consecutive hours a law enforcement officer may work.

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Tammy Johnson
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EMPLOYEE SPOTLIGHT – Hollis Henry



Hollis began his employment at LGIT as a temporary placement in 2003. He left for about a year and contracted with Maryland Transit Administration until a permanent position opened at LGIT. He was offered the Claims Analyst position and returned to LGIT in November 2004.

Hollis was born in Puerto Rico, but moved to New York when he was 9 months old and spent his formative years there. In 1989, he received his Bachelor of Science in Business Administration and Economics from Atlantic Union College. In 1992, he became a claims adjuster for Utica Mutual Insurance in Garden City, New York. After working for several major carriers, Hollis was employed by Commercial General Union Insurance Company which, in 2000, transferred him to Maryland.

Hollis earned a Masters of Science Degree in Human Resources Management and Labor Relations from the New York Institute of Technology. Hollis rightfully believed this degree would improve his ability to evaluate, negotiate, and settle claims.

Currently Hollis lives in Mitchellville, Maryland, with his wife of almost 23 years, Darlene, and his two children, Chloe, 13, and Christian, 11. He is an ordained deacon in the Seventh-Day Adventist Church in Washington, D.C. He has been on the board of directors for several non-profit organizations.

In 2010, Hollis ran the Marine Corps Marathon. He spends his free time with his children in all types of youth activities and is deeply involved in their education.

When asked what he enjoys most about being a LGIT Claims Analyst, Hollis responded that he loves to investigate, negotiate, and settle cases.

LGIT is very lucky to have Hollis on its team!

Maryland Local Government Health Cooperative

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- Town of Chesapeake City
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- Town of Hampstead
- Kent County
- Kent County Library
- Local Government Insurance Trust
- Maryland Municipal League
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More Information

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

LGIT Calendar

JANUARY

Regional Defensive Driving Course-Town of Berlin

January 14, 8:30 AM - 3:30 PM @ Town Hall, Council Chamber, 10 William Street, Berlin, MD 21811

Regional Defensive Driving Course-City of Takoma Park

January 21, 8:30 AM - 3:30 PM @ City Hall, Azalea Room 7500 Maple Avenue, Takoma Park, MD 20912

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



BOILER LOG

| Manufacturer | | | | | | | | | | | | Boiler Number | | | | | Year Built | | | | | | | | | | | | | |
|---|--------------------------------|---|---|---|---|------------------------------------|---|---|---|---|----------------------------------|---|---|---|---|---|------------|---|---|---|-----------------------------|---|---|---|---|---|---|---|---|---|
| Month | Safety /Relief Valve Tested | | | | | Water Column Gage Glass Drained | | | | | Low Water Fuel Cut-Off Tested | | | | | Circulating Pump/Return Pump and System Checked | | | | | Burner Operation Checked | | | | | | | | | |
| | WEEK | | | | | WEEK | | | | | WEEK | | | | | WEEK | | | | | WEEK | | | | | | | | | |
| | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| January | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| February | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| March | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| September | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| October | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| November | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| December | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SAFETY/RELIEF VALVE: Pull try-lever to full open position with pressure on the boiler. Release try-lever to allow the valve to snap closed. | | | | | | | | | | | | PUMP AND SYSTEM: Check pump for proper operation and leaky packing. Examine traps, check valves, make-up float valves, expansion or condensate tank, and other parts of the system (i.e., piping). | | | | | | | | | | | | | | | | | | |
| WATER COLUMN OR GAGE GLASS: (Steam Systems Only) - Open the drain valve quickly to void a small quantity of water. Water level should quickly return when the drain valve is closed. | | | | | | | | | | | | BURNER OPERATION: If the burner starts with a puff or operates roughly, Call your service personnel AT ONCE! | | | | | | | | | | | | | | | | | | |
| LOW WATER FUEL CUT-OFF/Reset: Drain the float chamber while the boiler is running. This should interrupt the circuit and stop the burner. Press reset to start. If unit fails to lock out on reset, call for service at once. | | | | | | | | | | | | CAUTION: All discharges must be piped to a safe place. | | | | | | | | | | | | | | | | | | |
| For immediate reference: Enter name, address, telephone number of your service personnel | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Service dates: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| LOW WATER FUEL CUT-OFF: Competent personnel should dismantle the low water fuel cut-off for complete overhaul at least annually. The internal and external mechanism, including linkage, mercury bulbs, floats, and wiring should be carefully checked for defects. See manufacturer's instructions. Record service dates above. | | | | | | | | | | | | STOKER, OIL OR GAS BURNER AND CONTROLS: The stoker, oil or gas burner and all operating and protective controls should be thoroughly checked at least every three months by a competent service organization. See the manufacturer's instructions. Record the service dates above. | | | | | | | | | | | | | | | | | | |

Note: Repairs should be made immediately should any check or test indicate that the device being tested or observed is *not* in good operating condition. Record all repairs on the back of this sheet so that a complete record will be available for review.

