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LGIT News is a quarterly publication providing news and information for its member local governments.



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## LGIT Joins Local Government Opposition to Comparative Negligence Bill

A local government panel consisting of MACo Executive Director David Bliden, Harford County Attorney Rob McCord, Montgomery County Assistant County Attorney Chuck Frederick, MML Government Relations Director Candace Donoho, and myself, LGIT Claims Director Sherri Butler, presented testimony to the House Judiciary Committee and the Senate Judicial Proceedings Committee in opposition to HB 110 and SB 267, which sought to establish a comparative negligence tort system in Maryland. Such a system would allow injured parties, whose own negligence contributed to the cause of their injury, to recover damages.

LGIT testified that Maryland's current standard of liability is a fair and viable risk standard that –

Keeps insurance costs for local governments manageable and predictable;

Keeps claims adjusting and defense expenses low;

Encourages people to work hard to avoid accidents and to assume risk through first-party coverage when an accident does occur;

Minimizes frivolous and unmeritorious lawsuits and promotes settlements of claims and lawsuits.

A shift to comparative negligence would –

Encourage claimants to expect that some portion of their losses will be covered, thereby transferring their own negligence to third-party entities;

Substantially increase disputes among claimants, insurers and attorneys on the one side, and local governments on the other, in attempts to apportion loss to an individual who contributed to the cause of the loss;

Substantially increase loss payments, litigation, defense costs and adjusting overhead, which would result in higher insurance premiums for our members.

The local government panel testified that, for local governments, the issue was one of "potholes versus plaintiffs." The more money that local governments pay to investigate, defend and pay claims, the less money they will have to fill potholes and build schools. Fortunately, the legislative session ended without passage of HB 110 and SB 267. It is worth recognizing, however, that comparative negligence likely will be a threat again in future sessions.



Sherri Butler  
Director of Claims Services

## LGIT Board of Trustees

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Garrett County

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Commissioners  
Calvert County

## From the Boardroom...

**The Board of Trustees met on January 22, 2007, and took the following actions:**

- The Board approved a clarification in the Automobile Liability Scope of Coverage, PIP and Uninsured Motorist endorsements to define "employee" to include board and commission members who are acting within the scope of their duties for the member and who are entitled to Workers' Compensation benefits.
- LGIT currently pays replacement costs value for a building that is a total loss, up to three years after the loss. The Board approved a revision of the replacement cost valuation period of LGIT's Property Scope of Coverage from three years to 18 months.



Sandy Tedrow  
Executive Secretary

**The Board of Trustees met on March 27, 2007, and took the following actions:**

- The Board approved, by election, to a three-year term on the Board of Trustees the following: Barrie P. Tilghman, Salisbury; Robert McCord, Harford County; Susanne Hayman, Kent County; and Elissa Levan, Church Hill.
- The Board approved several changes to the Public Entity Endorsements to the Primary and Excess Liability Scopes of Coverage, which included language to clarify the endorsements.
- The Board approved the proposed funding and rating for No Fault Sewer Backup coverage to be done separately, following roughly the same methodology as used for the other lines of coverage.



*Come Visit Us*  
*June 24-27, 2007*

Please visit our booth at the 2007 Maryland Municipal League Convention in Ocean City, Maryland, to help kick off the celebration of our twenty years of service to members of the ...

**Local Government Insurance Trust**

# LGIT Grant Awards

## *Linking Members with Training*



### Calvert County

*Left to Right -*

Gerald W. "Jerry" Clark, Commissioner  
Linda L. Kelley, Commissioner  
Lt. Colonel Tom Hejl, Assistant Sheriff (accepting grant)  
Jon Burrell, Executive Director, LGIT  
Barbara A. Stinnett, Commissioner  
Susan Shaw, Commissioner Vice President  
Wilson H. Parran, Commissioner President, LGIT Board Member



### Charles County

*Left to Right -*

Dr. Edith J. Patterson, Commissioner Vice President  
Reuben B. Collins II, Commissioner  
Gary V. Hodge, Commissioner  
Wayne Cooper, Commissioner President  
Jon Burrell, Executive Director, LGIT  
Lt. Joseph Fenlon (accepting grant)  
Major Joseph Montminy  
Samuel N. Graves, Jr., Commissioner



### Garrett County

*Left to Right -*

Ernest J. Gregg, Chairman  
Jon Burrell, Executive Director, LGIT  
DaVina Griffith, Risk Manager (accepting grant)  
Dennis Glotfelter, Commissioner



### City of Laurel

*Left to Right -*

Michael R. Leszcz, Council Member  
Chief David Crawford  
Mike Sarich, Council Member  
Frederick Smalls, Council Member  
Gayle Wellford Snyder, Council Member  
Jon Burrell, Executive Director, LGIT  
Mayor Craig A. Moe (accepting grant)

# Hazard Evaluation Surveys

## Twelve Steps to Prepare

*LGIT's Loss Control and Underwriting Department* (LCU) felt it would be a good idea to describe how to prepare for LGIT's Hazard Evaluation Survey. This should help the member better organize for an effective meeting and an outcome that is beneficial for both parties.

LGIT conducts a Hazard Evaluation Survey for each member approximately every two years, regardless of the member's size. The purpose of this survey is to evaluate the exposures for each line of coverage (i.e., General Liability, Auto Liability, Auto Physical Damage, Property, Public Officials and Police Legal Liability). Changes in exposures both positive and negative are then provided to the underwriter assigned to that member.

The following twelve steps will help members prepare for and should improve the hazard evaluation process:

**1** Review the appointment letter, which is sent to the member contact and which confirms the date of the visit and the start time. In the letter, an outline lists the areas of interest planned to be covered. Usually, the sites to be seen during the visit are jointly agreed upon by the loss control representative (LCR) and the member contact or his/her designee.

**2** Prepare a list of any questions or issues that LCU can assist in resolving during the Hazard Evaluation Survey.

**3** Have ready the Loss Control Audit Checklist, which is forwarded with the appointment letter. Review the checklist and make available any necessary items to help assist in the evaluation.

**4** Provide a copy of the member's risk management/safety program, personnel policy and completed Loss Control Checklist for Employer Liability.

**5** Have available sample waivers, hold harmless/indemnification agreements and certificates of insurance from third-party contractors, vendors, or those using the member's facilities.

**6** Provide a sample of the various departments' (i.e., roads, water and waste water, parks and recreation, etc.) preventive maintenance procedural manuals and/or complaint logs.

**7** For evaluating Police Legal Liability, arrangements should be made to visit with the member's police and/or sheriff's departments to discuss their general orders manual and related training.

**8** A responsible person should be available to assist during the survey to provide information and to accompany the LCR during the visit. It is beneficial to have the supervisors for the departments to be visited available to discuss present policies and procedures for their respective departments/divisions.

**9** The LGIT quarterly loss report should be reviewed prior to the visit. Trends and/or root causes of losses can be discussed during the evaluation. The impact of loss ratios can be addressed during this visit. Refer to the Continuing Service Visit (CSV) program noted next.

**10** The CSV Plan (when applicable) is a program where the LCR and the member contact jointly look for the root cause of loss, set up specific service objectives for future visits, and submit recommendations and a target date for completion of the recommendations. The LCR sets up future dates to monitor the effectiveness of the loss control efforts.

**11** The member's last Loss Control Report Card will be reviewed. Any questions regarding the report card can be addressed during the evaluation.

**12** The member should provide information regarding any additions or deletions of either buildings or contents to the member's property schedule.

LGIT's Loss Control and Underwriting Department hope that this outline of activities can assist the member in understanding the importance of the Hazard Evaluation Survey. We appreciate the time and effort that the member and its staff provide during these visits.

If you have any questions regarding hazard evaluations, please contact Richard A. Furst, Senior Loss Control Manager at 1-800-673-8231 or [dick@lgit.org](mailto:dick@lgit.org)



Richard A. Furst  
Sr. Loss Control Manager

# Spotlight on Members

## The City of Greenbelt Receives Safety Committee Award

Jon Burrell presented the City of Greenbelt with the Safety Committee Award for reaching a milestone in its safety and risk management efforts.

The award was presented to the City in recognition of having a risk management committee spanning at least five years and for the longevity, spirit, interest, and contributions of each member of the group.

LGIT's Loss Control and Underwriting Department assisted Connie Harris in starting this committee in December 1998, and their work is greatly appreciated by the Trust.



### *1st Row Left to Right*

Capt. Dan O'Neil, Administrative Captain  
Joe McNeal, Assistant Director, Recreations Operations  
William Smith, Refuse/Recycling Supervisor (Safety Team Member)  
Jon Burrell, Executive Director, LGIT  
Consuella Harris, Risk Manager/Human Resources Officer (accepting award)  
Willie Davis, Supervisory Inspector (Safety Team Member)

### *2nd Row Left to Right*

Leta Mach, Councilwoman  
Judith "J" Davis, Mayor  
Konrad Herling, Councilman  
Rodney Roberts, Mayor Pro Tem

**LGIT**  
**Congratulates**  
*participants for their  
loss control and safety  
efforts*

## The City of College Park

for its annual Spencer Harris Awards promoting and recognizing safety in the workplace for their employees. Special recognition goes to Carol Linder for all her work in reducing incidents and promoting safety.

## St. Mary's County Metropolitan Commission

for hosting two regional Harassment in the Workplace seminars. Nearly 100 employees and staff, representing five Trust members, attended the two sessions.

## Harford County

A special thanks goes out to Kathy Butler, Administrative Assistant to John Walter, Risk Manager for the County, for all her hard work on COPE and related property schedule matters.

## The Employment Law Hotline

The Hotline is a phone service available to Liability Program members that provides up to 30 minutes of free legal advice on employment matters.

We have selected for printing one inquiry of interest that was posed through the Hotline. This member service is provided by LGIT, with the assistance of Daniel Karp, Esquire and Kevin Karpinski, Esquire.

### QUESTION

Must local governments release information about salaries of public employees to the public?

### ANSWER

**YES** - a local government must make information about public employee salaries available to the public.



## Limiting the Release of Personnel Information Pertaining to Public Employees

The personnel records of public employees are considered confidential, but are not privileged. Under Maryland's Public Information Act, personnel records are deemed confidential in order "to preserve the privacy of personal information about a public employee that is accumulated during his or her employment." 78 Op. Att'y Gen. 291, 293 (1993). Being classified as "confidential", as opposed to "privileged", means that, under certain circumstances, personnel records may be disclosed to third parties. An example might be ongoing litigation, where due process concerns could outweigh confidentiality. If a court strikes this balance, it can order the production of an individual's personnel records.

### Privacy Protections Afforded Employees

An important issue concerning confidentiality arises when a prospective employer contacts a local government in an effort to obtain information on a current or former public employee. This circumstance brings into play a number of competing, and important, interests, including the privacy protections afforded employees and the reasonable expectations of prospective employers in hiring qualified candidates. In an effort to accommodate these interests, the legislature enacted § 5-423 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code more than a decade ago. This statute provides that an employer acting in "good faith" may not be held liable "for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer: (1) *To a prospective employer of the employee or former employee at the request of the prospective employer, the employee, or former employee; or (2) If requested or required by a federal, State, or industry regulatory authority or if the*

*information is disclosed in a report, filing, or other document required by law, rule, order, or regulation of the regulatory authority.*" § 5-423(a)(1) and (2) (emphasis added).

### Acting in Good Faith

The statute further provides that an employer who discloses the described personnel information is "presumed to be acting in good faith", i.e., with an honest intention or belief. This presumption can be overcome by clear and convincing proof that the employer acted with actual malice, i.e., ill-will, hate, spite, or other improper motive, or intentionally or recklessly disclosed false information about its current or former employee. § 5-424 (b)(1) and (2). The important point here is not the presumption of good faith, but the fact that it can be overcome.

### Avoiding Liability

In sum, local governments must be extremely judicious when deciding whether to disclose personnel records or information derived from them. An erroneous disclosure could quickly lead to suit and, potentially, to liability. When contacted by a prospective employer, you must ensure that the request for disclosure is initiated by the prospective employer or by the current or former employee. Even then, disclosures must be made in good faith, with no improper motive. Clearly, the safest course when any question arises concerning the propriety of disclosure is to obtain the employee's written consent prior to the release of the information.



John F. Breads, Jr.  
Director of Legal Services



Result of tornado damages in La Plata, Maryland, in April 2002. Photo courtesy of NOAA National Weather Service.

## **WIND PERILS**

Spring is here and that means many of us must once again be on the alert for storms and violent winds. Violent winds include general windstorms, thunderstorms, hailstorms, hurricanes and tornadoes. The Atlantic coastal zone is one of the areas most likely to incur severe violent wind damage. While roofs are the most susceptible to wind damage, other features are also exposed. Windblown debris, unfastened materials and inadequate support systems also affect windows, walls, towers, and buildings under construction.

Hurricanes strike the Atlantic seaboard between June and November. Thunderstorms may strike anywhere at any time. Tornado season is generally considered to occur from March through August, although tornadoes can occur any time of the year. Maryland is generally considered to be a low frequency tornado area by the Maryland Emergency Management Agency (MEMA).

### **Pre-Event Actions**

The best time to prepare for damaging winds is before they occur by considering the design of new buildings and the retrofitting of older buildings. In addition, training personnel to respond quickly should be part of the member's risk management planning. The following pre-event actions should help to minimize damages:

- Engineer structural design to withstand high winds;
- Carefully select building sites outside flood zones and tidal surges;

- Properly maintain roof supports for outside structures and tie-downs for structures of inferior construction, and use approved materials and methods for securing building roofs to walls and support structures (i.e., high wind anchorage);
- Move materials stored outside inside a substantial structure or protect them in some way against high winds and localized flooding;
- Before an oncoming severe storm hits, board and tape doors, windows and other openings;
- Ensure that emergency power equipment is available to provide utility services, operate pumps and maintain protection systems.

### **Post-Event Actions**

Once a severe weather event has occurred, the member can expect shortages to develop along the lines of construction material availability. The following post-event actions will help to prepare for the next severe weather event:

- Make sure enough materials such as plywood panels, plastic sheets and tarpaulin are on hand to cover building openings such as windows and skylights and to make emergency repairs. Plenty of sandbags and flood shields should be available and designed, if possible, to protect buildings and equipment from high water;
- Personnel should be trained and assigned to handle post-event emergency operations such as knowing the location of gas, electric and other utility service shutoffs, providing watchman service during emergency periods, operating emergency equipment and making temporary repairs. Also, personnel should be able to assist with salvage and cleanup and be qualified to restore protection systems and resume normal operations;
- Post-event activities should be coordinated with fire and police units.

For hurricanes, details are available at the MEMA Web site at [www.mema.state.md.us](http://www.mema.state.md.us). For tornadoes, details are available at the Federal Emergency Management Agency (FEMA) Web site at [www.fema.gov](http://www.fema.gov).

Vance Petrella  
Manager, Loss Control & Underwriting



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## Training & Seminar Schedule

### May

#### Defensive Driving Class

May 8, 2007 - Takoma Park, MD

#### Renewal Workshop

May 16, 2007 - Online Web Presentation

#### Dynamics of Fleet Safety

May 23, 2007 - Salisbury, MD

### June

#### Defensive Driving Class

June 7, 2007 - Takoma Park, MD

#### Basics of Risk Management

June 26, 2007 - Ocean City MML Convention,  
10:45 -12:45

For seminar  
descriptions,  
directions and  
registration forms,  
visit [www.lgit.org](http://www.lgit.org).

For more information, contact  
Larry Bohlen, Training Coordinator,  
at 1.800.673.8231 or by e-mail at  
[lbohlen@lgit.org](mailto:lbohlen@lgit.org).

