

Inside

From the Boardroom ...Page 2

LGIT Oil Can Award
RecipientPage 2

Mark Your Calendars
for the LGIT 21st Annual
MeetingPage 2

Board of Trustees &
LGIT Management .. Page 2

Member Services Series
Focus on the Department
of Finance and Information
ServicesPage 3

The American Society of
Safety Engineers Person
of the MonthPage 3

LGIT Receives MSAE Circle
of Excellence
Award.....Page 3

Hurricane Season
starts June 1, 2008...Page 4

Preventing Lightning
LossesPage 5

Safe Digging - Avoiding
Miss Utility Losses....Page 6

LGIT 20-Year Anniversary
Awards Honoring
LGIT Members.....Page 7

LGIT CongratulatesPage 7

LGIT Training Grant
Program.....Page 7

Employment Law Hotline
Q & APage 7

Training & Seminar
Schedule.....Page 8

The Operation of Municipal Parking Garages **Will Governmental Immunity Save the Day?**

Our Court of Special Appeals recently considered whether governmental immunity was a valid defense to a negligence suit arising from a fall in a municipal parking garage. The facts in *Bagheri v. Montgomery County*, No. 782, September Term, 2007 (decided May 6, 2008) established that the plaintiff parked her car in a garage owned by Montgomery County. When she returned to the garage, she tripped and fell on an uneven area in the concrete floor. The plaintiff suffered a fractured right foot and injured her left knee and arm. The fall was caused by the County's failure to properly repair and maintain the concrete floor, which had an uneven section.

Case in Point

The garage in question is owned and directly operated by the County. All funds collected from its operation are applied to the Bethesda Parking Lot District Fund and are used to pay principal and interest on any outstanding bonds issued to acquire, build, restore, or improve parking facilities within the parking District. Any balance remaining after such payments is used by the County to acquire, build, maintain, or operate off-street parking facilities and to reimburse the County for the general revenues advanced to the parking District. In the event that a balance remains after these payments, the County's Director of Finance must hold such surplus funds until the next fiscal year and then apply them in the same manner as current revenues are applied. The parking garage does not operate for profit nor was it designed to operate at a profit.

The Court of Special Appeals Affirms Decision

In response to the plaintiff's lawsuit, the County moved for summary judgment on the grounds that it enjoyed governmental immunity. The circuit court agreed and dismissed the suit. On appeal, the Court of Special Appeals affirmed the decision below. In doing so, the appellate court first restated the time-honored test to determine whether an action is governmental or proprietary in nature: An act is governmental in nature where it is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest. The operation of the garage in this case was sanctioned by legislative authority, operated solely for the public benefit, with no profit to the County, and intended to benefit the public as a whole. Therefore, the operation of the garage was a governmental act to which immunity applied.

While the determination of whether an act is governmental or proprietary in nature is not always easy, our courts have held that the operation of a public park, a day camp, a town pool, a police force, a courthouse, and a transportation service are all governmental acts. However, for historical reasons, a local government's obligation to maintain its streets and sidewalks in a reasonably safe condition is deemed to be proprietary, not governmental. Consequently, governmental immunity is not a valid defense in these circumstances.

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

From the Boardroom...

The Board of Trustees met on March 19, 2008, and took the following actions:

- Approved the following for election by the members to a three-year term on the Board of Trustees: David Deutsch, City of Bowie; Stewart Cumbo, Town of Chesapeake Beach; and Roger Fink, Charles County.
- Approved the exclusion of BMX biking from the General Liability Coverage.
- Approved waiver of deductible if the member and LGIT mutually agree that the damage to be covered to the auto's windshield is to be repaired rather than replaced.
- Approved the addition of liability-specific location exclusion endorsement to the Primary Liability Scope of Coverage.
- Approved a Primary Liability Scope change to clearly exclude secondary employment or off-duty activities coverage for law enforcement officers except by endorsement.
- Approved the Scope change to the Auto Liability Scope and the Excess Liability Scope, to provide that law enforcement or other governmental use of covered autos in the prevention of a crime is not excluded.



Carol Stallings was presented LGIT's Oil Can Award for Team Player of the Year 2007-2008 in recognition of her achievements that have contributed to the total success of the staff and LGIT. Congratulations, Carol!



Town of Hampstead - Ken Decker, Town Manager, and Tammy Palmer, Assistant Town Manager, visited LGIT to meet with our Claims and Underwriting staff. Jon Burrell presented them with our signature coffee cups.

LGIT NEWS • Summer 2008

LGIT NEWS is published quarterly by Local Government Insurance Trust, a not-for-profit organization that provides coverage and risk management services at stable and competitive rates and is owned and managed by its local government members. Please direct questions and comments regarding *LGIT NEWS* by email to editor@lgit.org or by mail to LGIT News, 7225 Parkway Drive, Hanover, MD 21076.

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The Departments of LGIT

Focus on the Department of Finance and Information Services

Today's Department of Finance and Information Services (Finance & IT) is a fusion of the traditional accounting shop with information technology and desktop publishing specialties. The primary goals of the Finance & IT department are:

1. To safeguard LGIT assets.
2. To provide outstanding service to our members and staff.
3. To provide and preserve accurate financial data.

Earle Beyer, Director of the department for 11 years, along with the three dedicated professionals he supervises, have a combined total of 47 years of service to the Trust with expertise in the following areas: Accountant – Betty Haynes, 11 years of service; Systems Engineer – Michael Becker, 11 years of service; Database Analyst/Media Specialist – Sheryl Browning, 14 years of service.

The move to new offices in July 2007 presented a significant IT challenge for Michael this year, but he managed to have all computers, printers, copiers and fax machines up and running when staff reported for work at Parkway Drive for the first time.

The Government Finance Officers Association (GFOA) recently notified LGIT that our Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2007, qualifies for a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting. LGIT's CAFR has won the Certificate of Achievement for nine years in a row. The Finance & IT department is responsible for producing LGIT's CAFR, which is done almost entirely in-house, from design concepts to financial statements, with only the report cover printing and binding outsourced.

The Finance & IT department is also responsible for LGIT's quarterly newsletter, all accounts payable and receivable, financial reporting, and investment management. The department also maintains the LGIT Web site and Intranet. The Intranet site, created by database analyst Sheryl Browning, includes a data warehouse for member contact information and is a valuable resource for LGIT staff.

Keeping in mind the commitment to safeguarding Trust assets, the Finance & IT department has implemented two major improvements to their accounting software in Fiscal Year 2008. These enhancements will assist with the tracking and depreciation of fixed assets, will protect cash assets against fraudulent banking transactions and will significantly improve audit controls while saving time and money on manual asset management and payment reconciliations.

While it is true that the Finance & IT staff works mostly behind the scenes, we do love to hear from our members, so please let us know if you have any suggestions for the newsletter or ideas for ways to enhance our service to you.

Betty Haynes

Accountant, Finance and Information Services



March 2008

The American Society of Safety Engineers Person of the Month

Richard A. Furst is the American Society of Safety Engineers (ASSE) Chesapeake Chapter president and the senior loss control manager at LGIT. He has been in the insurance industry for over 30 years, working in loss control and risk management.

Dick teaches risk management classes for elected and appointed local government officials for the Institute for Governmental Service Academy for Excellence. He has been a member of ASSE since 1979 and became the president of the Maryland Chapter on July 1, 2007. He is a certified instructor for the National Safety Council's Defensive Driving course. He is a past president of the Public Employees Safety Association and is currently on the board of directors for the Chesapeake Region Safety Council. Dick was recently appointed to the Maryland Public Risk Management Association (PRIMA) Board.

Dick has been a speaker at many conferences and seminars both regionally and nationally, including the Maryland Association of Counties, Maryland Municipal League, National Institute for Standards and Technology, County Engineers Association, Maryland Recreation and Parks Association, Safety Council of Maryland's Annual Conference, the Delmarva Safety Association, and the National League of Cities Risk Information Consortium Regional Southeast Loss Control and Board of Trustee's meetings.

LGIT has received the top "Program Innovation" award three years in a row from the Maryland Society of Association Executives (MSAE) for LGIT's Risk Management Manual, which is written under Dick's direction, and which has also received high recognition from PRIMA and similar organizations around the country. LGIT was nationally recognized by PRIMA and received the second place award for the Qualifying Contractors seminar that Dick has presented frequently to a variety of local governments. (Reprinted in part from the March 2008 American Society of Safety Engineers Chesapeake Chapter newsletter.)

MSAE Circle of Excellence Award LGIT Receives Top Honor

At their Annual Meeting in April, The Maryland Society of Association Executives presented LGIT with this year's MSAE Circle of Excellence Award in the training category for our On-Demand Training Program.

Congratulations on this achievement to Larry Bohlen, who developed this program with assistance on the program components from Matt Peter, John Breads and Dick Furst. This is the sixth time in the past eight years that the Trust has received an award from MSAE.

SUMMER STORMS

How to Protect Against Losses Caused by Severe Weather

HURRICANE SEASON starts June 1, 2008

Ah, the dreaded budget season is over and now that summer is here we get to relax and plan our vacations. But wait. Is there a fly in the ointment? It's also the start of hurricane season (wind, flood and surge, oh my...).

Unfortunately, hurricane season is one of the worst untimely events since this is when masses of people populate the coasts for summer vacations. While our members' increased revenues are potentially greater in summer, so too are the risks for hurricanes, which, unfortunately, are predicted to be above average for 2008.

Hurricane Predictions

While we know specific hurricane predictions have been uncertain, they have been useful and reliable in the general scope of things. 2008 may be an interesting storm year for the Atlantic coastal states, especially in light of the severity of storms like Hurricane Katrina, and most recently Cyclone Nargis in Myanmar. The incredible devastation that these storms cause is primarily due to storm surge resulting in a tremendous loss of life and property.

Hurricane experts led by Dr. William Gray at Colorado State University are predicting higher than average and more intense activity in the Mid-Atlantic states for 2008. Their reasoning has to do with the polarizing of the jet streams. The probability of landfall in the Mid-Atlantic states increases to an above-average 69% without the jet stream effect pushing the storms out to sea. (<http://hurricane.atmos.colostate.edu/Forecasts/>)

Risk Management Techniques

Implementing the appropriate risk management techniques such as risk financing and risk control is extremely vital for managing hurricane catastrophes. The first step is risk financing, which typically means having the appropriate amount of insurance coverage and limits; therefore, it is extremely important that every LGIT member have flood insurance.

LGIT provides flood coverage for all flood zones including the 100-year flood zone that encompasses coastal areas. LGIT provides \$5 million limits per occurrence and annual aggregate. The coverage allows for replacement cost except for zones A & V, which are covered at actual cash value. The deductible is each member's standard property deductible for all flood zones except for flood zones A & V (the 100-year flood zone). The deductible for flood zones A & V is \$25,000 per structure.

NOTE: Flood coverage is an option that must be requested and must be scheduled, especially for flood zones A & V. Furthermore, any loss of income or extra expenses because of a flood will not be covered without flood insurance. Now is the time to obtain LGIT flood coverage before it's too late, as the coverage will not be available immediately prior to an expected and approaching storm.

Risk control is the second technique used to prevent and/or reduce hurricane losses and is the most difficult to implement. For hurricane risk control recommendations, it is advised that members review Module 9 – Property Perils, Section 9.9 - Hurricane Perils of LGIT's Risk Management Manual at <http://www.lgit.org/docs/misc/mod9.pdf>.

Please be aware that LGIT's Risk Management Manual on our Web site is now password-protected. Please contact your LGIT underwriting or loss control representative to obtain the password information.

Please do not hesitate to contact LGIT underwriters for a flood quote or LGIT loss control representatives for flood control recommendations.

Hoping for a safe and pleasant summer.



Scott Soderstrom, CPCU, ARMP
Underwriting Manager

The table below is from the Colorado State University weather forecasters, considered to be experts at making hurricane forecasts. As shown, the Atlantic coast can expect roughly a 100% increase in the number of storms, a 100% increase in storm duration and a 50% increase in storm intensity from June 1 to November 30, 2008.

Atlantic Basin Seasonal Hurricane Forecast for 2008	
Forecast Parameter from 1950-2000	April 9 2008
Named Storms (NS) (9.6)	15
Named Storm Days (49.1)	80
Hurricanes (5.9)	8
Intense Hurricanes (2.3)	4
Intense Hurricane Days (5.0)	9
Accumulated Cyclone Energy (96.1)	150
Net Tropical Cyclone Activity (100%)	160

PREVENTING LIGHTNING LOSSES

A bolt of lightning can destroy a building, start a fire, ruin electronic equipment, and cause injury or death. Over the past five years, LGIT members as a whole have experienced over six hundred thousand dollars in lightning-related property losses. Training employees to use emergency precautions, such as installing surge protection devices and lightning protection systems, is a cost effective way to help protect employees and assets from lightning.

What Causes Lightning to Occur?

In simple terms, lightning is a powerful version of static electricity, often experienced in dry weather. A thunderstorm is caused by turbulence that results when masses of warm air meet. Lightning occurs when strong winds within a cloud produce an electrical field inside the cloud. As voltage increases, lightning arcs through the air looking for a ground. Lightning carries tremendous power with a charge of up to 200,000 amps and 100 million volts. Lightning follows the easiest path from the cloud to the ground, which means that it is easily attracted to tall objects such as building roofs, antennas and trees. A conductor of electricity is a low-resistance material, such as copper wire, through which electricity flows easily. A grounding conductor is the wire (green or bare) in a cable that carries no current and is used as a safety measure to establish a ground.

Power Surge Protection

A nearby lightning strike can send a powerful surge through electrical wires that can damage electronic equipment such as computer systems and dispatch operations equipment. Lightning can also enter a building through windows and chimneys, seeking a ground source such as metal wires or pipes. Metal buildings can become dangerous if not properly grounded. Grounding can be incorporated during the construction phase. Grounded antennas, cables, telephone wires and even aluminum siding offer some



Lightning over the Chesapeake Bay, Somerset County, MD
photo courtesy of flickr.com/creativecommons

protection against lightning damage. Most building or construction codes (International Building Code, National Electric Code, etc.) require that any potential conductors be grounded.

Protect all computer and communication center equipment with surge protectors. Surge protectors guard against bursts of electricity often caused by lightning striking a nearby electrical line. Surge protectors do not offer much help in direct strike circumstances. Each facility or piece of equipment should be provided with some form of surge protection, along with a separate unit at the main electrical panel.

Lightning Rod Protection Facts

In lightning-prone areas, consider having a protection system professionally installed. This involves placing air terminals (lightning rods) on the roofs of designated buildings and running braided copper cable to buried grounding poles. The placement of air terminals must be calculated precisely to give full protection, and grounding poles must be matched to the soil and climate in the area.

Installation of air terminals involves many complex factors and should be performed by a licensed, insured, professional installer. The following are facts regarding lightning rod protection:

1. Rods and protection systems don't attract lightning, nor do they influence where lightning will strike.

2. Rods or protection systems do not and cannot prevent lightning, nor can they "discharge" thunderstorms.
3. Lightning protection systems (including placement of rods, cables, and groundings) are custom-designed for individual structures and require complex engineering to function properly. They should only be installed by qualified contractors.
4. Lightning protection systems do not always prevent damage to electronics or computers. Such devices should still be unplugged during thunderstorms to ensure sufficient protection.

Information from this article was reprinted in part with prior approval from the Texas Municipal League Intergovernmental Risk Pool.

To learn more about lightning safety, visit the National Weather Service Web site at <http://www.lightningsafety.noaa.gov/>.

When Thunder Roars, Go Indoors!

Lightning Safety Week: June 22-28, 2008



Vance Petrella
Manager, Loss Control Services

Safe Digging! Avoiding Miss Utility Losses

Summer excavation projects are beginning, and LGIT's Department of Claims Services knows from experience that, next to automobile accidents, utility cut claims are the most frequently reported claims by our members. A recent verdict against a LGIT member that struck a copper cable during excavation exceeded \$80,000.

Maryland's Miss Utility Act

Public utility damage claims occur when a local government public works department strikes a utility line, such as BG&E, Verizon or cable television, during an excavation project within a right of way or easement. Maryland's Miss Utility Act (*Md. Code Ann. Public Utility Companies Art. §12-101, et seq.*) was enacted in 1974 and regulates excavation and demolition activities near underground facilities. The legislative intent of the act was to protect underground facilities of public service companies from destruction, damage or dislocation in order to prevent, 1) death or injury, 2) property damage to private and public property, and 3) loss of services of public service companies to the public. The Miss Utility law defines excavation as an operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by using any tool, equipment or explosive. This includes grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing and driving a mass of material.

The "One-Call" Notification System

The Miss Utility law requires owners of underground facilities to participate in the Miss Utility Call Center's "one-call" notification system and submit a telephone number for each county to which calls concerning proposed excavations or demolitions may be directed. The owner of the utility company or its designee is then required to mark the line when notified of a potential excavation. But, the Miss Utility law places the sole obligation on those contemplating excavations, as defined above, to notify the utility owner or its designated "one-call" designee at least 48 hours but not more than 10 working days before starting excavation. Furthermore, the excavator must exercise "due care" during the excavation to avoid damaging the utility line. Therefore, all

persons who engage in excavation have a legal obligation to avoid damage to underground utilities.

Complying with Miss Utility Requirements

In dealing with our members on these frequent claims, we have noted that many local governments have enacted policy, local ordinances, or permit requirements that mandate the depth (usually 24 inches) that a utility company must bury its cable within a right of way. Consequently, members do not always comply with the Miss Utility requirements of notification and due care when an excavation is not expected to reach the depth of the buried lines. Please note that local government policies mandating utility depth requirements do not relieve a member of its obligation to comply with the Miss Utility law. *Bd. of Co. Commissioners of Garrett Co. v. Bell Atlantic-Maryland, Inc.*, 346 Md. 160 (1996).

The following procedures must be followed prior to excavation projects:

- Call "Miss Utility": At least 48 hours but not more than 10 working days prior to a dig, call "Miss Utility" and have any underground utility that may be in the area of the proposed excavation site located and marked. This MUST be done for any excavation project, including those that involve minimal dirt removal. If the work does not begin within 10 days of the call to "Miss Utility," a repeat call is required.
- Maintain Records: Keep a record of the date, time and confirmation number that you receive from the "Miss Utility" call.
- Test the Area: If the proposed excavation project is within 18 inches of the locator mark, the excavation crew must first "test pit" or hand-dig the area to locate the utility prior to using any heavy equipment. The excavation crew must use "due care" when digging. "Due care" may be defined as the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

Occasionally, our members will strike utility lines during excavation because utility owners are often negligent and do not bury or properly mark the utility area. A "Miss Utility" locate marker must be within 18 inches on a horizontal plane on either side of the utility. When a utility owner is negligent, LGIT will vigorously defend against those claims; however, we must have members' help to preserve certain evidence at the time of a utility cut. If a utility strike occurs, public works departments are advised to follow these procedures in order to assist LGIT in defending against the claim:

- **Notification:** Immediately notify the owner of the utility whenever a strike or damage occurs.
- **Document the Strike:** Compile a list, which includes the date, time and location of the occurrence, along with the name of the supervisor and all employees who were present on the excavation site. A copy of the "Miss Utility" locate ticket should be attached. List the name of the utility company that sustained damage, along with the name, badge number, and any statements that may have been made by any utility employee who was called to the site.
- **Measure and Photograph:** Measure the distance from the excavation site to the locate mark. Take photographs showing the damaged utility and its relation to the "Miss Utility" marking using a ruler. This will show whether the utility had been properly marked and buried.

Those LGIT members that are responsible for risk management must ensure that their public works departments and all personnel responsible for excavation projects have a copy of the Miss Utility law and understand its obligations. Furthermore, please provide report forms and a camera to those employees so that evidence of negligence on the part of a utility company may be preserved at the scene of the utility strike. **From grading the shoulders of a roadway to digging ditches, Miss Utility is the law!**

Sherri N. Butler
Director, Claims Services



LGIT 20-Year Anniversary Awards Presented Honoring Members



Town of Leonardtown - Left to right: Mayor J. Harry ("Chip") Norris III, and Wilson H. Parran, President, Board of County Commissioners, Calvert County, and LGIT Board Member.



Worcester County - Left to right: Judy Boggs, Comm., Louise Gulyas, Vice President, Jon Burrell, Executive Director, LGIT, Virgil Shockley, President, Linda Busick, Comm., Robert Lee Cowger, Jr., Comm., and Bud Church, Comm.



Town of Willards - Left to right: Steven E. Warren, President of the Board of Commissioners, and Barrie Tilghman, Mayor, City of Salisbury, and LGIT Board Chair.

LGIT Congratulates

Congratulations go to the following LGIT members for their loss control and safety efforts:

Carroll County

– for collecting detailed field work providing numerous and complete COPE data for their covered properties.

Town of North Beach

– for photo documentation of all their mobile equipment covered in their property schedule, a great way to make sure their schedule is as accurate as possible.

Charles County

– for their review of contracts and for forwarding them to the LGIT Underwriting Department for final review regarding indemnities, hold harmless, defense, insurance requirements, etc.

LGIT Training Grant Program

LGIT's Training Grant Program provides an opportunity for LGIT members to assist their employees with obtaining education and training to advance their skills.

During the spring cycle, the following LGIT members received training grant awards totalling \$12,987:

Calvert County

– to attend Lift Truck Operator Train the Trainer training.

Cecil County

– to attend Forklift Operator Safety training.

Howard County

– to attend Verbal Judo training.

Town of Middletown

– to attend Competent Persons Excavation & Trenching training.

Worcester County

– to attend CPR Instructor training.

Training Grant applications are available on our Web site at http://lgit.org/training/training_grant_program.htm.

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. This service is provided by LGIT, with the assistance of the law firm of Karpinski, Colaresi & Karp, P.A.

Q Should a local government fulfill an employee's Public Information Act request to reveal the names of other employees in his or her department who may have been involved in a disciplinary proceeding similar to the one pending against him or her?

A **NO.** Pursuant to the Maryland Public Information Act it is required that local governments DENY access to personnel files other than an employee's own and it is permissible for a local government to also deny access to its investigatory files.

Call Before You Act!
800.845.8055

June

Property Loss Prevention Seminar:

Sewer Backup Prevention
10:00 a.m. to 12:00 p.m.

Miss Utility Safe Digging
1:00 p.m. to 3:00 p.m.

Charlotte Hall Branch Library
37600 New Market Rd., Charlotte Hall, MD 20622
Thursday, June 5, 2008

Washington County Building
100 W. Washington St., Hagerstown, MD 21740
Tuesday, June 10, 2008

Garrett College
687 Mosser Rd., McHenry, MD 21541
Wednesday, June 18, 2008

NSC - Defensive Driving Course
Kent County Public Works Complex
709 Morgnec Rd., Chestertown, MD 21620
Friday, June 13, 2008
8:30 a.m. to 2:30 p.m.

NSC - Defensive Driving Course
Kent County Public Works Complex
709 Morgnec Rd., Chestertown, MD 21620
Tuesday, June 17, 2008
8:30 a.m. to 2:30 p.m.

July

Harassment in the Workplace:
How Hostile Work Environments Are Created and How to Avoid Them
Harford County
Thursday, July 10, 2008

Harassment in the Workplace:
How Hostile Work Environments Are Created and How to Avoid Them
Harford County
Thursday, July 24, 2008

August

NSC - Defensive Driving Course
Carroll County - TBA

Harassment in the Workplace:
How Hostile Work Environments Are Created and How to Avoid Them
St. Mary's County - TBA

Supervising With Confidence:
A Workshop for Beginning Supervisors
St. Mary's County - TBA

Mark Your Calendars!

LGIT 21st ANNUAL MEETING
November 20, 2008
Sheraton Annapolis Hotel

LGIT WELLNESS PROGRAM

Our lunchtime exercise program continues with a circuit training class, which includes working out with weights, bands and balance balls. Participating employees especially enjoy this particular class because of its cardio benefit.

We offered a series of four nutrition Lunch & Learn workshops, given by a licensed nutritionist, which included valuable information on reading labels, eating out, portion control, supplements, carbohydrates, fats and proteins.

If you'd like information about the LGIT Wellness Program for your workplace, please contact Marsha Carpenter or Sandy Tedrow at 1-800-673-8231. We'd love to...

Share The Wellness!

REGISTER ONLINE!

Local Government Insurance Trust

training & seminar class registration
Summer 2008

For more information about the classes listed, contact Larry J. Bohlen, Training Coordinator. Advance registration is required for all classes. Registration fees vary depending on member/non-member status and the type of training or seminar. Members are encouraged to use the online method of registration; however, downloadable forms are available at <http://www.lgit.org/training/schedule.htm>.



**800-673-8231 or
443-561-1700**

(general information)

<http://www.lgit.org/training/registration.htm>

(online registration)

443-561-1701

**(FAX registration forms to
Attn: Michelle Yannone)**