

Member Spotlight

"I want to recognize the outstanding member service provided by LGIT staff. Their commitment and dedication to accommodating the busy schedules of members to provide training and other valuable services is unparalleled. We know that if we have a question or concern, LGIT is always there with a solution. St. Mary's County appreciates the knowledge, experience, and enthusiasm of LGIT's entire team of claims, underwriting, and loss control professionals".

- Kathy Arnold

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LGIT's 24th Annual Meeting

Kathy Arnold, Risk Analyst St. Mary's County



Kathy has more than 25 years experience in Human Resources, Insurance, and Risk Management. She began working for St.

Mary's County in 2002 as the HR/Risk Specialist and was promoted to Risk Analyst in 2005. Kathy oversees the

From the Boardroom

The Board of Trustees met on June 18, 2011 and took the following actions:

Approved the Executive Committee's recommendations to adopt the FY 2012 operating and capital budgets.

Approved the Underwriting Committee's recommendations as follows:

- 1) Changing the medical payments coverage language to allow members discretion in paying claims.
- 2) Adopting the new snow plow no fault property damage endorsement allowing members and LGIT claims staff discretion in paying claims.
- 3) Giving discretion to LGIT claims staff and to members in adjusting claims

County's liability, property and self-insured workers' compensation programs, as well as claims processing. She also coordinates and oversees the Safety and Risk Management policies and programs, OSHA compliance, the Employee Safety Committee, Loss Control Team, and the quarterly Risk and Safety Newsletter. Kathy is a Red Cross CPR/AED/First Aid and Blood-borne Pathogens instructor and is currently working on her Associates in Risk Management.

covered under the No Fault Sewer Backup endorsement.

- 4) Clarifying that a sewer backup caused by lateral line is covered if the member is responsible for maintaining the line.
- 5) Excluding defense costs for claims for injunctive relief against detention facilities.
- 6) Limiting the definition of "Member" to the local government in "consent to settle" situations.

LGIT Trustees Election

The following individuals were elected by the members to a three-year term on the Board of Trustees commencing July 1, 2011: David Deutsch (Bowie), Stewart Cumbo (Chesapeake Beach), and Roger Fink (Charles County).

LGIT Board of Trustees

David J. Deutsch, Chairman
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Risk Management

POOLING – OWNERSHIP IN THE PROCESS

Pooling, in my opinion, is the best method a local government can utilize to finance unexpected losses. This is because pool premiums are usually stable, and because local governments have a vested interest in the financial performance of the pool. Since 1987, pooling has become the preferred method of risk financing for public entities in Maryland.

In fact, pools are the preferred market for local government insurance coverage across the United States. The Local Government Insurance Trust (LGIT) and the Maryland Association of School Boards' pool insure most local government and school boards in the state.

The word "member" is the most important word in pooling vernacular. That is because a member of a pool is much more than an ordinary insured; it is an owner. Additionally, members govern the pool through the elected board of trustees. These trustees normally hold either elected or appointed positions within a member local government. The board is usually comprised of mayors, managers, finance directors, council members and supervisors and is responsible for setting pool policy. The board is also involved in selecting outside service providers such as independent auditors, actuaries and pool counsel. Determining dividend levels and other vehicles of surplus return, approving lines of coverage, approving new members, and hearing claims appeals are also the board's responsibility. Finally, the board elects officers and committee chairs.

All pools have an appointed administrator who acts as the chief operating officer. He or she is usually an employee of the sponsoring

associations, or, in the case of LGIT, reports directly to the board of trustees. He or she is responsible for signing contracts with subcontractors, acting as a liaison between the board and the members, and performing all day to day operations of the pool. The administrator's primary function is to see that board policy is carried out.

Public entity pooling has been around for more than 25 years. It started in the late seventies with worker's compensation and became the preferred choice for financing property and liability risks by the mid eighties. Pools for both of these lines were in response to a crisis in the traditional insurance market. Insuring public entities has never been the primary focus of the insurance industry, and insurance has always been cyclical. Every time there is a hard market (high prices and a scarcity of available coverage), the public sector is one of the first markets abandoned by the insurance industry. Public associations such as MML and MACo responded to this situation, and together with 20 local governments, created LGIT.

Pooling is designed to provide availability and stability to an otherwise unpredictable market. Even though pools purchase excess insurance from the insurance industry, they normally do so with a very high retention so price fluctuations in the commercial marketplace are muted. Because local governments join together as a pool, the pool is able to take a much higher retention level than most local governments can take on their own. Pools are also better equipped to make decisions on deductibles and levels of coverage because they employ professional staff who are familiar with the market and the potentials for loss.

In order to understand pooling, one must understand how pools are created and operated. The following is a basic outline of how most pools were created and operate:

- The association (in LGIT's case, MML and MACo) appoints a board which in turn, establishes the pool;
- The board asks members to provide initial financing (capitalization which is usually in the form of a letter of credit or money on deposit as a loan);
- The board hires an administrator to provide underwriting, claims and loss control services;
- The administrator sends out premium notices to members;
- The member signs a membership agreement spelling out the legal relationship with the pool;
- After the appropriate documents are signed, the member fulfills its capitalization requirement (money to pay claims);
- The pool administrator provides the member a coverage document (the contract); and
- The pool administrator begins paying claims and expenses (with the board's permission), sets up case reserves, and, with the assistance of an actuary, determines the appropriate amount of members' equity to return (this past year, LGIT returned \$3.7 million in premium credits to its members).

Pools are more flexible and creative than ordinary insurance companies and can offer novel coverages that typically are not available in the market place. An example of a novel line of coverage is LGIT's recently created no fault sewer back up coverage. This endorsement, developed at a member's request, authorizes the payment of sewer losses even where the local government is not legally liable.

Because of Maryland's favorable immunity laws, LGIT's members are often faced with difficult political calls where governmental operations caused private property damage for which the local government is not legally liable. Prior to offering this coverage, LGIT was prevented from paying for the

damage because of its fiduciary responsibility to raise all available defenses. This coverage now provides LGIT members a limited solution for politically turbulent claims. Another example of valuable member input is LGIT's hiring of in-house legal staff. Although their primary duty is to defend cases, the in-house legal staff also publishes articles of interest to members, offers counsel to Claims Services, and develops training programs designed to limit claims.

Pools also have the ability to hire competent and professional staff. As stated earlier, many traditional insurers no longer have offices in Maryland so their claims staffs are not familiar with Maryland law. LGIT has taken advantage of this situation by hiring talented insurance professionals familiar with Maryland. Pools are attractive to insurance professionals because of the relationships they can develop with members. For instance, LGIT has 176 members and our staff has become very familiar with all them. The typical insurance company has thousands, if not millions, of customers. Consequently, their staff are simply unable to develop strong personal relationships with them. LGIT employees have a great deal of expertise in the areas of loss control, claims underwriting and insurance finance. Practically every professional hired by LGIT over the past few years has come from the insurance industry and they have since developed expertise in the public entity insurance arena. This is important because our staff and the staffs of most pools have learned what is and what is not important when it comes to rating, loss prevention and claims investigation.

Pools normally emphasize risk control to a much greater degree than the industry and this comes at a time when many insurance carriers have

eliminated their loss control programs. Controlling and/or avoiding losses is what pooling is all about. Many governmental pools' risk and loss control departments, including LGIT, have become so sophisticated that they are producing videos on "How to Avoid Sewer Backups," "Sidewalk Safety," and "Pursuit Driving". They also teach classes on supervisor safety inspections, accident investigations, and workplace harassment.

In conclusion, controlling and avoiding losses is what risk financing is all about and pooling is the best mechanism for accomplishing this result. Pools are able to achieve this by giving members ownership in the process. Over the last 21 years, I have worked for three governmental pools. I have seen them develop into the preferred risk transfer solution for local governments. Forging relationships and keeping members and boards accountable have been key in making this happen. I assure you, LGIT is at the forefront of government pooling because of our staff, coverages, and the services we provide. The fact that our primary goal is to serve our members will keep us there. Thank you for being a member of the LGIT family of local governments and for participating in your pool.

Tim Ailsworth
Executive Director
LGIT

Avoiding Deer Collisions

The Insurance Institute for Highway Safety estimates that last year there were over 1.5 million deer-to-vehicle collisions and 180 human deaths. Fortunately, there are some simple things all of us can do while driving to avoid or prevent a collision with a deer.

Stay alert! The best way to spot a deer is to look for movement on the side of the road. Most often, deer are seen at dawn or dusk. Remember that deer frequently travel in herds; missing one deer doesn't mean that another isn't nearby. The most likely time of year to strike a deer is during the hunting or mating season, between October and December.

If you are faced with a deer collision, there are a few important points to remember. The most important is to turn your vehicle to the right and not to the left. If you must pull out of your lane to avoid a collision, turn your vehicle to the right as far as needed, off the road if necessary. Never pull into the opposite lane, as this could lead to a head-on collision with another vehicle, which is likely to be worse than hitting the deer itself.

Remember to travel at a speed that is appropriate to the area and the conditions; the slower you are traveling, the more time and options you have. If you must leave the road, do so by simply guiding the car off the road, avoiding sudden and forceful actions. If possible, try to gently guide the car back onto the road. Slamming on the gas or the brakes when turn off or back onto the road can be more dangerous than simply guiding the car where you intend for it to go.

Always watch where you are going instead of watching the animal, because that might cause you to steer towards the deer. If you must hit something when you turn off the road, try to hit it off-center of the vehicle to decrease the potential for driver and passenger injury and vehicle damage.

If a collision with a deer cannot be avoided and the deer is struck, there are a few simple guidelines to follow. Immediately inspect the damage to the vehicle and, if possible, move the vehicle off the road. Make sure your hazard lights are on. If the vehicle is immobile, make sure to set up the traffic devices such as fluorescent triangles or flares, if possible. Never attempt to touch or move the deer – remember they are wild animals that are likely to try to defend themselves.

Remember, slow down, stay alert and stay safe!

Reprinted from the Maryland Sheriffs' Association website at www.mdsheriffs.org

On the Legal Front

Is The Devil In Paid Police Details?

“Moonlighting” has long described the practice of holding a second job (often at night). In the law enforcement community, “moonlighting” evolved into what became known as “secondary employment,” meaning the private employment of off-duty police officers in a number of capacities, but usually as security guards. Secondary employment became so ingrained that, by law, police agencies cannot prohibit it; they can only reasonably regulate it. The liability landscape in Maryland for secondary employment dramatically changed ten years ago when the Court of Appeals decided the case of *Lovelace v. Anderson*.

The *Lovelace* case virtually ended the ability of private employers of off-duty police to automatically shift liability for the officer’s misdeeds back to the police agencies and local governments that primarily employed them. Instead, through application of agency law principles (the body of law governing principal-agent or employer-employee relationships), Maryland courts are now required to determine on a case-by-case basis who in fact “employed” the officer at the time of the events and impose liability accordingly. To reach a decision courts will look at factors such as who has the power to select and hire the officer? Who pays the officer’s wages? Who has the power to discharge the officer? Who controls the officer’s conduct? And whether the work is part of the regular business of the employer. A clear implication of the *Lovelace* decision is that in classic secondary employment situations, both private employers and police agencies (*i.e.* local governments) may share liability with the offending officer.

Just as “moonlighting” evolved into “secondary employment,” “secondary employment” is now evolving into another form of off-duty officer

employment: paid police details. In essence, paid police details are private uses of off-duty, but uniformed police. Paid police details directly contemplate the potential use of law enforcement powers, usually in settings requiring the presence of more than one officer.

Paid police details have been associated with large scale events which involve both traffic and public safety concerns. Sponsors of events such as festivals, outdoor concerts, sporting events, fundraisers, and large parties, have all utilized paid police details in lieu of retaining private security. In fact, paid police details have been utilized by the very governments that employ the police officers. Yet, as with secondary employment of off-duty officers, there are a myriad of issues arising from the use of paid police details.

In March of this year, the Civil Rights Division of the U.S. Department of Justice (DOJ) released an investigative report on the New Orleans Police Department (NOPD)(United States Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, March 16, 2011). The Justice Department found many systemic problems with the NOPD, including its handling of paid police details. Some of the problems identified included corruption, officer fatigue, undermining of the chain of command, excessive demands on department resources, and cost. The report stated that “there are few aspects of NOPD more broadly troubling than its paid detail system”. The Justice Department made broad recommendations for improvements. In response, the Mayor of New Orleans directed the Police superintendent to completely revamp the department’s paid detail system. The troubled detail system gained further negative notoriety when revelations emerged about the city’s use of off-duty officers to examine traffic camera violations at lucrative hourly rates.

Due to the space constraints in this publication, I will devote the remaining discussion to the more positive aspects

of paid police details as opposed to dwelling on the negative. I will also focus on what police agencies and their local governing bodies must emphasize in the written policies and procedures controlling paid police details. Advocates of paid police details emphasize that they offer a more controlled and uniform means of providing police protection without many of the pitfalls associated with traditional secondary employment. Advocates also urge that paid details enhance public safety by providing a clear, visible police presence at locations and events where officers might otherwise not be present until after something bad has occurred. There is much to be said for these justifications. And, while it is true that there are departmental costs related to paid details, it was pointed out in a recent report from the Bureau of Governmental Research (BGR) (*Moonlighting: An Overview of Policies Governing Paid Police Details*,” August 2011), that “departments can price details to cover those costs and generate surplus revenue”. While the notion of surplus revenue may be enticing in troubled economic times, it should be noted that such profit-making could be used to counter an assertion of governmental immunity in a state non-constitutional tort action.

So, if upon balancing the pros and cons, a department elects to offer paid police details, there must be departmental policies and procedures in place to minimize risk. Simply stated, if your law enforcement agency is currently utilizing paid details, departmental policies and procedures must be clear and comprehensive. The more departmental control over details the better. Officers’ duties and responsibilities for each paid detail should be delineated and understood. Departments, not uniformed officers, should receive requests for paid details. Departments, not rank and file officers, should arrange for staffing, scheduling, supervision, use of equipment, and payment. Supervision should come

only from police personnel and any request for additional police activity from the detail's sponsor must be approved by police supervisory personnel.

As to payment, the BGR Report states that, “[p]lacing control of payments in the department eliminates direct cash payments to officers, makes the compensation system more transparent and allows the department to remove taxes from paychecks. It also prevents officers from charging exorbitant rates for details and enables the department to cover its detail related costs.” Apart from potential civil liability or worker’s compensation, other related costs arise from the use of department equipment, vehicles, and/or fuel. Concerning overtime, be sure to calculate officers’ work hours cumulatively so as not to run afoul of the Fair Labor Standards Act (“FLSA”).

Departmental policies should also take into account officer fatigue by establishing rest periods following a paid detail and limit the total time an officer can work in a week in a detail capacity. The NOPD Reform Plan would institute a six-hour rest period following a detail and limit the total time an officer can work in a week in any capacity to 76 hours. The Portland (Oregon) Police Bureau limits all employment to 60 hours and details to 20 hours a week.

As emphasized in both the DOJ and BGR Reports, the best paid police detail policies include the following elements:

- Centralized control and administration of all or most aspects of details;
- Appropriate limitations on the types of businesses and events that can hire officers for details, as conflicts of interest must be avoided;
- Eligibility requirements for officers seeking to work details;
- Limitations on work hours;
- A process for fairly assigning work ensuring proper staffing of details;
- A fee policy that compensates officers on a standardized basis and covers related departmental costs; and
- Monitoring and supervision of details (which may vary, based on the size of the event).

You may also want your policies to impose jurisdictional limits (such as limiting details solely to the agency’s sworn jurisdiction) and to prohibit law enforcement officers or departmental employees from forming any business that receives compensation from, or offers services for, details. You may want your policy to restrict the ability of high-ranking officers to work details, perhaps limiting their role to a supervisory one and even then, only in circumstances where a large number of officers will comprise the detail. Finally, law enforcement agencies that have a paid police detail system should consider banning details that detract from the statute of the officer or the agency, or pose a conflict of interest. In this regard, agencies should consider banning details related to private parties, gambling activities, the display of pornographic material, establishments whose principal business is derived from the sale of alcohol, employers under departmental investigation, and events sponsored by persons with felony records. The BGR Report points out that bans on secondary employment as “a process server, repossession, debt collector, bail bondsman, independent contractor of police services, or at a credit agency or towing company” should be considered.

In conclusion, paid police details are quickly supplanting traditional police secondary employment. Local governments must be aware of and adapt to the change. In Maryland, this is especially true because application of the Lovelace factors listed in the opening paragraph ensure that, in the event of a civil lawsuit arising from a paid police detail, police agencies and their local governing bodies will not avoid liability and will be held accountable. As such, the best way to prepare for any legal challenge is to now ensure that police agencies have policies and procedures in place that can withstand not only legal, but just as importantly, public scrutiny.

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



Employment Law Hotline

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

Q Can a local government obtain the driving records of its employees from the MVA without the employees’ consent?

A Pursuant to State law (Md. Code, State Gov’t Art., §10-616(p)(5)), a local government may obtain employees’ full driving records without consent for use in connection with matters of motor vehicle or driver safety. However, any “personal information” (as defined by statute) contained within an employee’s driving records must be kept confidential.

**Call Before
You Act!**

800.845.8055

Our Mission—Providing insurance and risk management services at stable and competitive rates through an organization that is owned and managed by its Maryland local government members.

Training/Seminar Classes

September

NSC Defensive Driving Course

St. Mary's County Potomac Building
Leonardtown, Maryland
Friday, September 23, 2011
8:30 AM - 3:30 PM
Lunch provided

NSC Defensive Driving Course

City of Havre de Grace Community Center
Havre de Grace, Maryland
Wednesday, September 28, 2011
8:30 AM - 3:30 PM
Lunch provided

October

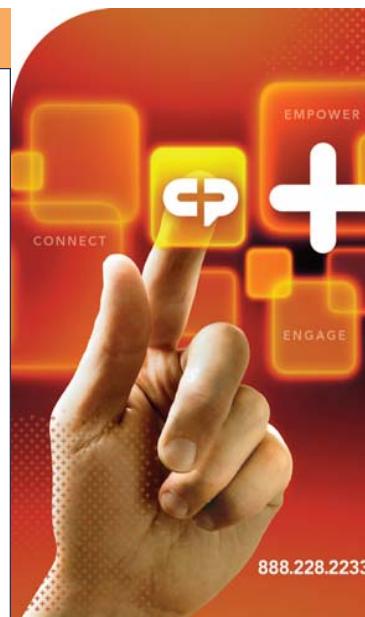
NSC Defensive Driving Course

Cecil County Administration Building
The Elk Conference Room
Elkton, Maryland
Thursday, October 13, 2011
8:30 AM - 3:30 PM
Lunch provided

General Information — 800-673-8231 or 443-561-1700

Online Registration — www.lgit.org/training/schedule.htm

FAX Registration — Attn: Michelle Yannone, 443-561-1701



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Philip Favero, PhD & Panel



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**You are cordially
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**Thursday, October 6, 2011
Governor Calvert House
58 State Circle
Annapolis, Maryland**



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