

## Maryland Municipal League's "If I Were Mayor" Essay Contest

Again this year, LGIT was happy to participate in sponsoring MML's "If I Were Mayor" Essay Contest. Michele Keplinger, LGIT's Member Services Associate, attended the event which was held at the Maryland State House on May 20. Lieutenant Governor Anthony G. Brown presented a Governor's Citation, an award plaque and \$100 to each district winner.



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## From the Boardroom

The Board of Trustees met on May 25 and took the following actions:

Approved the Underwriting Committee's recommendation for exclusion of defense costs for injunctive relief lawsuits against detention facilities.

Approved the Underwriting Committee's recommendation for changing the Medical Payments coverage language to allow members to exercise discretion in paying claims.

Approved the Underwriting Committee's recommendation for the adoption of the new

Snow Plow No Fault Property Damage Endorsement allowing members and LGIT Claims staff to exercise discretion in paying claims.

Approved the Underwriting Committee's recommendation to give members and LGIT Claims staff discretion in adjusting claims under the No Fault Sewer Backup Endorsement.

Approved the Underwriting Committee's recommendation to clarify that coverage extends to a sewer backup from a lateral line if the member maintains the line.

If you have questions regarding the above, please contact Hank Schomburg, Director of Underwriting and Loss Control.

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## Risk Management

### What Are You Doing To Lead In These Trying Times?

When Franklin Roosevelt said, “all we have to fear, is fear itself,” he was attempting to calm a nation which had never experienced anything like the Great Depression. Certainly there had been depressions before, but nothing of this magnitude. By 1930, we were well into the Industrial Age, and an international economy. Banks, small businesses and corporations were failing, and homes were being foreclosed at an alarming rate. Sound familiar? One would have thought we would have learned from the past. What we are now experiencing will likely not be as devastating as the 30’s, because, hopefully, local government leaders will take the time to understand the issues and not depend on the federal and state governments to solve their problems. As local leaders, now is the time to show the type of leadership shown by President Roosevelt. His resilience and determination during this time were unequaled and he was astute enough to surround himself with people who were able to “think outside the box” and create something called the New Deal. The New Deal was no panacea, but its creators did take the time to understand what was happening in the Country and do what was needed to keep the schools running, upgrade the infrastructure, put people back to work and put food on the table. This program took a great deal of planning, patience and a willingness to try things that had never been tried before. This article does not advocate anything as revolutionary as the New Deal, but it does ask elected officials to go about the business of governing in a different way. Lead. The New Deal did not solve all of America’s problems in

the 30’s; it was merely the instrument through which Franklin Roosevelt led. It took his resolve and determination to make the New Deal successful and it will take that same kind of determination and resolve to lead our communities through our troubled times. Below are a few ideas that local leaders can use to lead:

- Assess what you are currently doing both individually and as part of a corporate body
- Recognize that your role may need to change in this environment; “step up and lead”
- Maintain an open line of communication with constituents before making tough decisions
- Join together as community leaders and send a unified message to citizens
- Make the tough decisions that are in your community’s best interest
- Accept the community’s reaction to your decisions, whether it be anger over increased taxes and fees or employee layoffs
- Maintain an open dialogue with professional managers and administrators so that they will not be surprised by the council’s or board’s actions
- Work with managers to ensure that employee morale is taken into account in the decision-making process
- Hold joint budget work sessions with community school leaders and constituents

As community leaders, are you facing the realities of these tough times? Federal stimulus money has delayed making tough decisions, but ultimately councils or boards are going to have to face the reality that there is just not enough money available to provide the same level of services provided in the past. How do you feel about making these hard decisions? A good approach

is to have frequent and early budget workshops with ample citizen participation. If citizens are involved, although they may not ultimately like the outcome, they will feel like they were heard. Gone are the days when councils can begin work on a budget in March and complete the process in May.

“Step up and lead” is a nebulous phrase but it is exactly what is needed in these times. If you adopt a “business as usual” mindset, you just might find that your local government is a total mess and that will cost you politically. Meet with your community’s large employers and find out what their short and long term plans and goals are. Invite community leaders to council work sessions and let them know that you are interested in their situations and how they affect their employees or congregations. Reassure them that you are planning for the worst but making decisions for the best.

Council members or boards do not always agree; that is part of the representative process. But in tough times, nothing is worse than sending out a mixed message. Argue issues with vigor, but at the end of the day, reach a consensus. Consensus building is an important part of this process. Respect everyone’s opinion and give everyone the opportunity to be heard, but with the understanding that, once the decision is made, the council or board will unite behind it. Citizens are looking for guidance, leadership and reassurance. Actions demonstrating the contrary are counterproductive.

Being a local government official requires you to make tough decisions, and the decisions you make now will greatly impact your community in the future. Consequently, you must work harder to understand all aspects of every issue and what impact your decisions may have. Will you vote to increase taxes or fees to maintain the same level of service or will you vote to keep taxes and fees at current levels or

even reduce them to lessen the burden on citizens? Either way, your decisions have long term effects. Increased taxes or fees will work a hardship on some or all, and layoffs will result in a reduction of services.

Preparation and communication are two of the most important tools you can utilize now in advance of these difficult decisions. By using these tools, you can explain that the budget is merely a mechanism through which the community's priorities are recognized.

Be sure to keep managers and administrators abreast of all decisions. Dialogue with managers is critical. The last thing you need is a manager who announces something publically that is inconsistent with the message the council or board wants to send. Let managers know what is expected of them and hold them accountable. Define your respective roles and meet with managers to ensure you are on the same page. Although you don't want to micro-manage, you do want to know what is going on at "town hall."

Ask managers to keep you apprised of employee morale. Good morale is key to the delivery of services. Poor employee morale reflects badly on elected officials and their communities. If employee morale is bad, find out why and take the steps necessary to improve it. One such step is budget related. Educate employees as to the seriousness of budget shortfalls. Have an "Employee Education Day," and explain why there is less money available to increase salaries. Employees may not understand that the General Assembly is returning less money to local governments or that property and sales tax receipts have dropped significantly. Take the time to explain that these hard facts prevent you from giving raises across the board. Understanding the issues helps employees accept the situation and, hopefully, the level of service they provide will not diminish.

A good way to control costs is to share facilities or services. Look for opportunities to share, such as sharing buildings or playing fields that can be

used by both parks and recreation departments and schools.

Regionalization is also a great way to reduce capital and administrative costs. For example, rather than having adjoining communities provide separate water and sewer services, creating a regional authority to supply the service may be more efficient, especially if professional staff is used.

Have monthly joint budget sessions with school officials. The worst thing you can do as an elected official is to surprise a school superintendent at the last minute and inform him or her that there is no money for the school system. Surprise can also cost you politically. Imagine the negative publicity that flows from not involving school officials in the funding process. Including school officials early on allows them to plan for staffing and program cutbacks rather than having to make them at the last minute. Involving school officials in the budget process also provides them with an unfiltered view of the budget.

These ideas should help this year. It is up to you, however, to ultimately step up and lead. Use your down time to come up with other creative ideas to help your community. Look for solutions in unusual places and keep the laptop nearby. Some of the best ideas I've ever had came while lying in bed thinking about what needed to be done to improve my job performance.

No one really knows what inspired Roosevelt to come up with the New Deal, but we do know that it was his leadership, hard work, and planning that inspired our Country to regain its confidence and, within ten years, become the world's leading economic power.

Tim Ailsworth  
Executive Director, LGIT

## **Lightning Rod Protection Facts**

In lightning-prone areas it is highly recommended to have a professionally installed lightning protection system. This involves placing air terminals (lightning rods) on the roofs of designated buildings and running braided copper cable to buried grounding poles. Installation of air terminals involves many complex factors and should be performed by a licensed, insured, professional installer.

To learn more about lightning safety visit the National Weather Service Web site at: <http://www.lightningsafety.noaa.gov/>. or Lightning Protection Institute at [www.lightning.org](http://www.lightning.org).

## **Lightning Rod Protection**

- ✓ Rods and protection systems don't attract lightning, nor do they influence where lightning will strike
- ✓ Rods or protection systems don't and cannot prevent lightning, nor can they "discharge" thunderstorms
- ✓ 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
- ✓ Lightning protection systems do not always prevent damage to electronics or computers. Such devices should still be unplugged during thunderstorms to ensure sufficient protection

## **Simple Lightning Protection**

Simple, reliable and inexpensive protection methods can prevent lightning damage to equipment. The most important concepts are:

- ✓ Divide and control the lightning strike energy
- ✓ Capture the direct lightning strike
- ✓ Dissipate the energy into the ground
- ✓ Isolate wire-line facilities from a remote ground
- ✓ Protect equipment from surges and transients (sudden changes of voltage) on communications and signal lines
- ✓ Unplug or disconnect electronics whenever possible when facing a lightning threat

## Services

### Managing Employment Related Claims

#### Sound familiar?

An officer of a small municipal police department is physically limited by a non-work related injury. He can no longer perform all of the functions of a police officer and there is no expectation of improvement. Although the officer has been allowed to perform light/administrative duties, the town has notified him that he must retire on disability. The officer's attorney notifies the town that its actions violate the Americans With Disabilities Act (ADA). Specifically, the attorney asserts that the town must accommodate the officer by allowing him to remain in light duty status. The town wants to respond, but only upon the advice of counsel.

A town clerical worker who is a member of a racial minority applies for a promotional position within her department. However, the job is awarded to a non-minority worker from another department who has job experience more specifically related to the position. The clerical worker files a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) alleging that she has been the victim of racial discrimination. The county is notified by the EEOC that it must respond to the charge within thirty (30) days. The town is uncertain who will assist it with its Position Statement and who will defend it against the charge.

Newly elected county commissioners conduct a closed meeting and vote to terminate the head of the department of public works. The commissioners announce to the local newspaper that the department head was terminated for cause. The former department head sues the county and

the commissioners. He alleges that his federal and State constitutional rights have been violated, that his protected property interest in his employment has been denied, and that the commissioners defamed him in their statements to the media. The commissioners are unsure who will defend them in the legal action and what defenses they have to the lawsuit.

#### How can LGIT help with employment related claims?

These scenarios are based upon actual situations encountered by LGIT members. Based on the common thread of employment, all are considered employment related claims. An employment related claim is any assertion by an employee that the action or inaction of a LGIT member or its employees has had an adverse impact on employment.

All decisions that negatively impact employment may ripen into claims that may then further ripen into charges of discrimination and/or lawsuits. As such, it is critical to keep in mind that employment decisions should be made prudently, cautiously, and upon the advice of counsel. Following this approach allows employment related claims to be first managed at the decision-making level. Here are some of the ways LGIT assists members in managing employment related claims, thereby reducing exposure to liability and reducing the number of costly lawsuits.

**Employment Law Hotline:** Anytime a member is contemplating a decision that will negatively affect an employee, we urge you to consult with counsel. In addition, as a service to our members, LGIT offers the Employment Law Hotline. The Hotline enables members of our Primary Liability Pool to receive up to thirty (30) minutes of free legal advice on employment related issues. This additional legal advice is given by

only the most experienced legal counsel and is designed to limit exposure to liability. We encourage you to utilize the Hotline. If you contact the Hotline and the matter subsequently becomes a lawsuit, LGIT will reduce the member's public official deductible by fifty percent (50%), regardless of the outcome.

#### *Representation at the Administrative Level:*

An increasing number of disgruntled employees and job applicants file charges of discrimination with federal and State agencies, including the Equal Employment Opportunity Commission (EEOC), the Maryland Commission on Human Relations (MCHR), and local agencies such as the Prince George's County Human Relations Commission. The EEOC's jurisdiction is limited to alleged violations of federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (discrimination based on race, gender, religion, national origin, and other protected characteristics), the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay act. The MCHR and local agencies entertain charges under both federal and State law. All of these agencies are responsible for receiving, investigating and resolving the charges of discrimination filed with them.

Once a LGIT member receives a charge of discrimination, the member should immediately consult with counsel and then notify LGIT's Department of Claims Services. Your Claims Analyst will create a claim file and assign counsel. Counsel will work closely with the member in preparing the Position Statement and in defending against the charge. Counsel will fully develop the facts and advance the strongest factual and legal defenses possible. Defenses may include not only the merits of the charge, but procedural defects that require its

dismissal. A favorable outcome at the administrative level does not automatically preclude litigation, but it may very well deter it.

#### ***The Benefits of Early Claims***

**Reporting:** The LGIT Scope of Coverage requires members to report potential and actual claims to the Trust. Early reporting of even potential claims enables Claims Staff to be aware of potential liability and gives us the opportunity to assist members in fashioning pre-litigation and even pre-charge resolutions.

#### ***Sheriff Employment Claims:***

Although the sheriff of each county is an independently elected State constitutional official, the General Assembly has made counties responsible for liability arising from a sheriff's performance of the law enforcement function. Section 9-108 State Gov. Art. Md. Code Ann. However, the responsibility for liability arising from a sheriff's employment decisions lies with the State. Consequently, LGIT does not defend sheriffs against charges of discrimination and/or employment related lawsuits. Instead, the sheriff must turn to the Office of the Attorney General for the defense of these claims.

Sherri Butler  
Claims Services Director, LGIT

## On the Legal Front

### Do You Really Have Notice of a Claim?

The Local Government Tort Claims Act (Md. Ann. Code, Court & Judicial Proceedings Article, §5-301 through §5-304) (LGTCA), the statute that limits the tort liability of local governments, states that no lawsuit seeking unliquidated (not pre-determined) damages may be brought against a local government or its employees unless the notice of claim required by the statute is given within 180 days after the injury. The "notice of the claim" required by the LGTCA must be in writing and given in person or by certified mail, return receipt requested, by the claimant or the claimant's representative. The notice must include the time, place and cause of the injury. But notice to whom? The local government employee who allegedly caused the injury? The employee's department head? Any of the local government's elected or appointed officials? Although the statute provides some answers to these and similar questions, it doesn't provide all.

For example, as to certain local governments, the person who is to receive notices of claim is clearly identified. The City Solicitor is the designated recipient for Baltimore City. For Howard and Montgomery Counties, the County Executive is the recipient. For Anne Arundel, Baltimore, Harford, and Prince George's Counties, the notice must be given to the County Solicitor or County Attorney.

But what about all other local governments? Who is to receive notices of claims for them? The LGTCA provides the following answer: "the county commissioner (assumedly the Board of County Commissioners collectively or the President of the Commissioners), county council, or corporate authorities of a defendant local government." Corporate authorities? Who does that include? A case to be decided shortly by the Court of Appeals of Maryland should provide the answer.

In *Hansen v. City of Laurel*, 193 Md. App. 80 (2010), the Court of Special Appeals of Maryland ruled that a claimant had not strictly or even substantially complied with the LGTCA notice provision when he gave his notice of claim to the city administrator. The court ruled that "corporate authorities" are "the political officials of a municipal corporation—the mayor and city council—not the administrators charged with carrying out the day-to-day business of the local government." Thus, in the court's view, a position that is subject to the supervision of the mayor, as is the city administrator, is not consistent with the concept of "authority." Further, the duties of the city administrator as identified in the city code did not include the investigation of tort claims against the city. Instead, the city code limited the city administrator's duties to, among other things, preparing annual budgets, exercising direction over all city employees, overseeing and inspecting all work performed under contract, and doing such other things in relation to the administrative affairs of the city as the mayor may require. Noticeably absent from the list were any duties pertaining to the investigation, advisement, or resolution of legal matters. The court concluded that such matters were vested in the city solicitor, not the city administrator. For this reason, the claimant's lawsuit was dismissed.

The holding of the Court of Special Appeals has been called into question and the Court of Appeals, Maryland's highest court, agreed to review the matter. The case has been briefed and argued and is now pending decision. In my opinion, the decision of the Court of Special Appeals will be reversed, but we will have to wait and see. In the interim, review your charters and codes to see if you have designated the person or persons who are to receive notices of claim under the LGTCA. This may go a long way in determining if you do, or do not, actually have "notice" of a claim.

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

## Training Classes and Seminars

### June

#### NSC Defensive Driving

Kent County Community Center  
11041 Worton Road  
Worton, MD 21678  
Thursday, June 23, 2011  
8:30 a.m. - 3:30 p.m.  
*Lunch provided*

#### Upcoming Training/Seminar Classes

##### *Dates and Times To Be Announced:*

- **Regional Sewer Back up Prevention**
- **MISS Utility Loss Prevention**

## Training Class & Seminar Registration

#### General Information —

800-673-8231 or 443-561-1700

#### Online Registration —

[www.lgit.org/training/schedule.htm](http://www.lgit.org/training/schedule.htm)

#### FAX registration forms —

Attn: Michelle Yannone  
443-561-1701

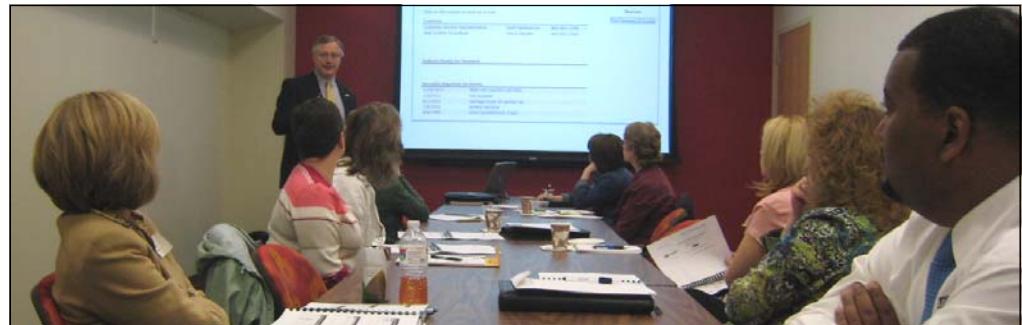
## Education

### LGIT Conducts Regional Policy Year Renewal Workshops

LGIT conducted four regional renewal workshops across the State in April. All meetings were well attended by members. LGIT staff shared important information including: insurance rates for FY 2012, member credits, changes to scopes of coverage, completion of applications and other programs/services.

In addition, representatives from BENECON provided an update on the Maryland Local Government Health Cooperative and Tom Lowe provided information on the Environmental Program and coverages that the Trust offers to members. These workshops are offered every spring and help our members with the annual renewal process. If you were not able to attend this year, please plan on attending next year. You will be glad you did.

Larry Bohlen,  
Manager Member Services & Education



Frostburg University, Frostburg



The Wellwood Club, Charlestown



Cambridge Yacht Club, Cambridge