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Public Officials: When Are Your Statements Protected?



Under Maryland law, a defamatory statement is one that "tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Batson v. Shiflett*, 325 Md. 684, 722-23 (1992). The question often arises whether elected county or municipal legislators can be sued for their statements to the press or other media sources. As with most legal issues, the answer is "it depends." Maryland law has long precluded civil or criminal actions against "a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a

(cont. pg.5)

Property Pool Coverage and Mold Exclusion

Since molds have become a source of insurance market restrictions this year, new exclusionary language has been introduced into the LGIT Property Scope of Coverage. With that exclusion, the Loss Control Department has determined that it would be important to describe molds; where they come from;

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Come to the Annual Meeting

Come to the Annual Meeting on the 18th of November in Annapolis!! It's the 15th anniversary of the Trust this year (somebody's getting old!!) and we want to make the meeting and the year special. Besides, you don't want to miss the opportunity to rub elbows with some of the greatest staff people you'll ever meet.

On the Inside: *Oh Mighty Health Care Costs: Wherefore Art Thou Going???, From the Boardroom Pg.2 / Contact Corner w/ Steven R. Marshall Pg.3 / Employment Law Hotline Pg.4 / Fidelity & Crime - Loss Prevention Guidelines Pg.6 / Future Health: What You Need To Know Pg.7 / Training Schedule, New Employees, LGIT's Anniversary, Marriage Pg.8*

Oh Mighty Health Care Costs: Wherefore Art Thou Going???

Does your entity offer medical and related insurance for employees? Most do. Well, if yes, you saw what happened this fiscal year with rates. Up, Up, and more Up.....And that's not the end of the story. Trend indicators for the cost of health coverage over the next four years are showing that you can expect an average annual increase of 25% for each of the four years. A question put to me at the recent MACo conference was: "Does this mean we can expect to be paying 100% more for our employees' health care coverage in four years?" The short answer appears to be 'Yes'. Talk about sticker shock to budgets!!! There just doesn't seem to be any solution to what is still a major national crisis.

The Trust has not been immune to what's happening in the market place. We try to price health coverage so that it will be competitive and given that we are a non-profit it would seem that we should be able to do so. Fact is, especially this past year, we didn't. The pool suffered six shock losses (each over \$100,000) and things like the cost of drugs ate up about 35 cents of every dollar spent in the Health Pool. The result was that we finished the year with a deficit in the Health Pool just after we had taken steps last year to fix a deficit at that time.

What to do?

This year we've provided higher cost options for prescription drugs and more focus on the generics. We've also changed claims administrators, which alone will save the Trust Health Pool about \$500,000. Additionally, the Health Benefits Committee of the Trust has been joined by the LGIT Finance/Audit Committee to come up with a fix for the deficit problem looking forward. They will be looking at other ways to address adequate drug pricing, possible mandatory wellness screenings, competitive rate settings, and even that bugaboo called "assessment". We are hoping the latter option won't be necessary, but it is an option and one that the pool had to use once before.

In any event you will be kept advised as this effort moves forward in our ongoing war on health coverage costs.

*Jon Burrell
Executive Director*



From the Boardroom

The Board of Trustees met on June 27, 2002 by tele-conference and took the following actions:

- ❖ Approved the Underwriting Committee's recommendation not to include terrorism or stop loss coverage in the basic property coverage.
- ❖ Approved the Underwriting Committee's recommendation that Chubb Insurance Company be our stand-alone carrier for equipment breakdown coverage; and that the Property Scope of Coverage be amended to reflect this change.
- ❖ Approved management's recommendation that the Board authorize the Executive Director and the Director of Finance to make a determination to effect a break under the 1998 agreement with Wachovia Bank, N.A., as long as the amount to be paid by the Trust to Wachovia Bank did not exceed a certain amount; and that if it is determined that the breakage fee and payment is more advantageous to the Trust, the Board further authorized the above named staff to negotiate, execute any documents to effect the transaction.
- ❖ Approved a Line-or-Credit for the Health Pool from the Primary Liability Pool for one year, July 1, 2002 to June 30, 2003, at a rate equal to the average return on the Trust's investment portfolio.

The Board of Trustees met on August 7, 2002 by tele-conference and took the following actions:

- ❖ Delegated to the Executive Committee to evaluate, with counsel, the financial and legal issues in assisting Prince George's County in a Bond Refunding and if there is no downside for the Trust, that the committee be authorized to approve providing such assistance on behalf of the Trust. If there are any issues, the committee would withhold approval of Trust assistance and report their findings to the Board at its next meeting.
- ❖ Ratified the acceptance of the Town of Chesapeake Beach in the Primary, Excess and Property Programs effective July 1, 2002; and the participation of the Mid-Shore Regional Council (sponsored by Talbot County) in the Primary Program effective July 1, 2002.

Trust Welcomes New Members to Its Pools

We're pleased to announce that the Town of Chesapeake Beach and Mid-Shore Regional Council (sponsored by Talbot County) has joined the Trust.

*Nancy Sulborski
Executive Assistant*



Contact Corner

Interview with Mr. Steven R. Marshall, Director of Emergency Services, Somerset County



LGIT's Dick Furst met recently with Steven Marshall and recorded the following:

Mr. Marshall: I'm Director of Emergency Services for Somerset County. I'm director of 911 and Emergency Management, director of Highway Safety and Risk Management Director. All these jobs — they are interesting and different.

In Emergency Management I deal with Preparedness for Disaster such as hurricanes, tornadoes, hazardous materials incidents - things of this nature. I also head up the Emergency Operations Center with the President of the County Commissioners.

In the 911 job, I have a 911 supervisor who works under me. I take care of all the budgetary details of the 911 office. We are currently in the process of upgrading our radio system to an 800-MHz radio system, which is challenging to say the least.

In the Highway Safety job, I have a coordinator who works under me. We deal with grant money that helps police agencies with overtime, as well as buying them radar guns, doing seat belt checks, doing things in the schools to make kids aware of using their seat belts.

I was the first Risk Management Director that the County had. LGIT had suggested that we do more with Risk Management. We did create a Risk Management Safety Manual in which we used a lot of information from LGIT. My risk management job is just a part-time job. It's something I take very seriously. I have a safety committee which meets every quarter. We try to be more pro-active in getting the word out on different safety issues. We meet with the different department heads. Periodically we do inspections, which LGIT has been very helpful. In cooperation with LGIT and thanks to their efforts, we put on a regional Defensive Driving, Reasonable Suspicion and Flagger classes, which were very well attended - our people attended them, as well as people from Dorchester, Worcester and Wicomico Counties. We are in the process of updating our safety manual.

At our next meeting we want to discuss that. Going through the manual, we probably have some different annexes that we need to add.

We also want to do more training. We want to utilize LGIT's Video Library. We also want to do as much in-house training as we can. With a small county, we have a very small staff and sometimes it's hard to get all of our people together at these different classes. So we thought we would do some in-service training as people's time and schedules allow.

In my other duties, I am a 25-year member of the Crisfield Fire Department. I currently serve as lieutenant. I was past president. I was captain of the Lower Somerset Ambulance and Rescue Squad. I'm a chartered member of that organization. I currently serve as Vice-President of the Marion Lyons Club. I'm a past president of the Crisfield Kiwanis Club.

I'm also past president of the Maryland Emergency Management Association. I was president of that organization for two years. I am also a past president of the McCready Hospital Board of Directors.

Some accomplishments that I am very proud of are receiving numerous governors citations for work in Emergency Management. I recently completed the Associate in Emergency Management class. All I need to do now is take the test. Hopefully I'll pass it.

Since 9/11 my job has become more important in the minds of most people who live in this county. Since 9/11 we've had anthrax scares. That was a challenge to us because we knew very little about anthrax. I worked in conjunction with the Health Department, the fire and EMS and police. We handled those pretty well, I think. We also have formed a Hazmat team since then. We have about 20 different people who serve on the Hazmat team. We have done a lot of training in bioterrorism. We formed a committee on terrorism, which is made up of the Health Department, State Police, local police, fire and EMS.

I don't think you can ever prepare for something like 9/11, but we have certainly become more aware of different things we were not aware of before. Since 9/11 we have become more security conscious. The 911 Center naturally is a prime target in any jurisdiction because of you knock out communities, you cripple the jurisdiction. So we are very selective about the people we allow to enter. One good thing about living in a small county, we know everybody, but we added more security cameras to the building. We can monitor the hallways. We can monitor the parking lots. We have become more conscious of security. We have also tried to increase security at the courthouse and at different government buildings, one of which, quite naturally, is the Sanitary District that takes care of our water supplies. Working with Mr. Robin Street, the Sanitary District Director, we have secured them in a better way. We have

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where they can be found and how they can be prevented. This loss control element of risk management should help minimize damages from this exposure.

Molds can be found almost anywhere; they can grow on virtually any substance when moisture is present. They produce tiny spores to reproduce just as plants produce seeds. The spores then move through indoor and outdoor air continually. When mold spores land on a damp spot indoors, they begin growing and digesting whatever they are growing on in order to survive. This can include: wood, paper, carpeting, foods and other materials. Since molds thrive most often in moist conditions, moisture control measures in both building design and preventative maintenance are key to prevention. It follows then to minimize mold growth, certain conditions must be monitored and controlled:

- ❖ Elimination of sites of water accumulation, i.e., roof and siding leaks, flooded areas, heating, ventilation and air conditioning (HVAC) system condensate, leaky pipes, areas of improper placement of vapor barriers, seepage to basements and crawl spaces, humidifiers, etc.
- ❖ Monitoring nutrient sources for the presence of mold such as: wallboards, ceiling tiles, carpets, cardboard, furniture, animal or insect droppings, vacuum cleaner filters, HVAC filters, etc.
- ❖ Monitoring areas where temperatures and humidity fall between 45 and 100 degrees Fahrenheit, and above 60% relative humidity.
- ❖ Controlling the source of spores from either existing growths or high ambient dust loads entering the building.

With the mold exclusion being introduced into this year's property program, we wanted to describe mold and how it is spread so that losses would be minimized. Those interested in the issue of mold, current news, science, litigation and legislation can visit the mold website at MoldUpdate.com

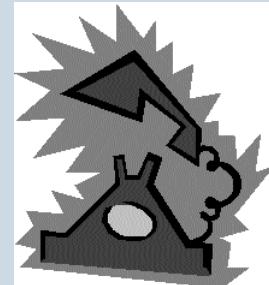
This article is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.

Vance Petrella
Manager
Loss Control & Underwriting



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 to print two interesting inquiries that were posed through the Hotline. This service is provided with the assistance of Daniel Karp, Esquire.



Q1: A police officer has been off work for nine months as a result of a non-work related hip replacement. The Town kept his position open but must now fill it. The question is whether or not the officer may be terminated for inability to do his job and, if so, whether the termination should be

A1: The Town may terminate the officer for inability to perform the duties required of a police officer. The termination is for performance, not related to discipline, and thus the LEOBR does not apply. The Town may, if it chooses, give the officer the option of resigning or retiring in lieu of termination.

Q2: Can an employer require an employee to transfer to another position when the employee is unable to perform the essential functions of his current job?

A2: Yes. The Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, prohibits an employer from discriminating against an employee on the basis of a disability. However, the employee must be able to perform the essential functions of the job with a reasonable accommodation. If an employee cannot perform the essential functions of the position with a reasonable accommodation, an employer can transfer the employee to another position in lieu of separating the employee from employment or keeping the employee in his current position.

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also beefed up our patrols with the police. They patrol these areas more. We also patrol the airport in the County more. So we have tried to get a better handle on security with what we consider important buildings. I think we have been very lucky. We had a few bomb threats, some anthrax scares, and they have all been hoaxes, but we take them seriously.



*Dick Furst
Sr. Loss Control Manager
Loss Control & Underwriting*

(Public Officials - cont. from pg. 1)

committee or subcommittee thereof.” MD. CODE (1998), Cts. and Jud. Proc. art., § 5-501. With this statute in mind, it is “beyond dispute that municipal [and county] legislators enjoy the protection of immunity when acting in the sphere of legitimate legislative activity.” *Montgomery County v. Schooley*, 97 Md. App. 107, 115 (1993) (quoting *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 731-32 (1980)). In *Manders v. Brown*, 101 Md. App. 191, 205 (1994), the Court of Special Appeals explained that:

[t]he purpose of this immunity is to insure that the legislative function may be performed independently without fear of outside interference To preserve legislative independence, we have concluded that ‘legislators engaged “in the sphere of legitimate legislative activity” . . . should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves.’

Under the “functional approach” test utilized by Maryland’s courts for determining what is and what is not legislative activity, the scope of immunity is determined in light of the functions and duties of municipal officials. *See Manders; Mandel v. O’Hara*, 320 Md. 103 (1990). Under this approach, if the conduct engaged in by a municipal or county official can be characterized as “legislative,” the actor is absolutely immune from any liability or suit emanating from that action. *Id. See Walker v. D’Alesandro*, 212 Md. 163, 173 (1957) (municipal officials are entitled to absolute immunity for those acts taken “within the actual field of the . . . powers or duties [a local government official] or

or so closely related thereto as to be entitled to an absolute privilege.”).

However, in one telling instance, our Court of Appeals held that a county councilwoman could be sued for defamation since the statements attributed to her were beyond the scope of employment of a local elected legislative official. In *Ennis v. Crenca*, 322 Md. 285 [1991], a county councilwoman directed a friend to contact the news media and accuse plaintiff of offering her a bribe at a luncheon in a meeting that preceded the council’s vote on a high-profile development project. The councilwoman later gave an interview with a reporter from a local newspaper in which she accused the plaintiff of offering to pay her outstanding campaign debt in exchange for voting against the proposed development project. The plaintiff sued, seeking money damages based on libel and slander.

Although the circuit court decided in favor of the elected official, the Court of Appeals reversed. It did so on the grounds that the councilwoman’s conduct was not in furtherance of the county’s business nor incidental to it, but, instead, was in furtherance of her own interests. Thus, the local legislator could be deemed too have acted beyond the scope of her employment. Specifically, the Court said that, “[u]nder the allegations of the complaint, the councilwoman’s conduct appears to have been a political act undertaken for her own benefit. It is difficult to understand how [the councilwoman] could have been fulfilling her duties as a local legislator, or in any way furthering [the county’s] business, by publicly accusing [plaintiff] of offering her money to pay campaign debts in order to influence her vote on a controversial development proposal when the defamatory conduct took place 76 days after the alleged bribe and long after the council’s vote.” In light of *Ennis*, a number of observations can be made. First, although Maryland’s Local Government Tort Claims Act was enacted to protect local government employees from excessive litigation, it was not enacted to shield local elected officials from actions involving tortious acts or omissions committed while engaging in personal ventures such as electioneering, campaigning or fund raising meetings to pay off campaign debts. Second, as the Supreme Court has observed, “[n]o man ought to have a right to defame others under colour of a performance of the duties of his office....It is neither within the scope of his duty, nor in furtherance of public rights, or public policy.” (quoting 2 J. Story, *Commentaries on the Constitution* § 863 at 329 (1833)); *Cheatum v. Wehle*, 5 N.Y.2d 585, 593- 594, 186

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N.Y.S.2d 606, 612, 159 N.E.2d 166, 171 (1959) (in holding that defamatory remarks made by the appointed head of the State Conservation Commission during an after-dinner speech to a group of citizens were not privileged, the court stated that “[t]he speech made by Commissioner Wehle ... was not greatly different from a speech of a member of the Legislature speaking to his constituents, explaining his votes or berating some of his colleagues which enjoys no privilege outside the legislative halls”). Third, although *Ennis* does not stand for the proposition that elected officials will always be acting beyond the scope of their employment when communicating with the media, suit may be allowed if the case involves an allegedly false and defamatory statement to the press, made by an elected official for the official’s own purposes.

In light of the above, the words of the Supreme Court should be heeded. The Supreme Court has observed, “[n]o man ought to have a right to defame others under colour of a performance of the duties of the office.... It is neither within the scope of his duty, nor in furtherance of public rights, or public policy.” *Hutchinson v. Proxmire*, 443 U.S. 111, 128 (1979) (quoting 2 J. Story, *Commentaries on the Constitution* § 863 at 329 (1833)); *Cheatum v. Wehle*, 5 N.Y. 2d 585, 593-94 (1959) (in holding that defamatory remarks made by the appointed head of the State Conservation Commission during an after-dinner speech to a group of citizens were not privileged, the court stated that “[t]he speech made by Commissioner Wehle...was not greatly different from a speech of a member of the Legislature speaking to his constituents, explaining his votes or berating some of his colleagues which enjoys no privilege outside the legislative halls”). Accordingly, it is wise for all of us, and especially our elected officials to “think, before you speak.” If not, even elected officials may not be shielded from personal liability and responsibility for judgments.



John Breads
Sr. Attorney
Claims & Legal Services



Fidelity & Crime – Loss Prevention Guidelines

In our fast paced and vigorous business environment, with increased dependence on technology and rapidly expanding geographic operations, opportunities for theft flourish. Employee theft can occur at any level of an organization, from the boardroom to the mail room, and in any amount. According to the U.S. Department of Commerce, employee dishonesty costs American businesses in excess of U.S. \$50 billion annually. It has been estimated that 75 percent of these crimes go unnoticed, leaving organizations with no possibility of recovering stolen assets.

Creating an effective plan to guard against employee theft within your organization is smart risk management.

Experts say that today’s organizations are more at risk to employee theft than ever and they give the following reasons why:

- ❖ Increased use of computers and networking, offers greater access to company records which help thieves cover their tracks.
- ❖ Corporate downsizing has strained management-employee relationships. More and more companies are trusting critical functions to contract workers who do not always share the employer’s philosophy of loyalty.
- ❖ Growth in the global marketplace has increased people’s motivation to gain a competitive edge, and for some, theft is a way to get ahead.

The following steps can help you prevent employee theft:

- ❖ Check thoroughly the backgrounds of people you are considering hiring.
- ❖ Create a stated policy on dishonesty and make that policy clear to all employees and contractors.
- ❖ Establish a system of checks and balances within your organization, including areas such as accounts payable and receivable and petty cash.
- ❖ Enforce your theft policies consistently.
- ❖ Shred documents containing confidential information
- ❖ Safeguard hardware and software.

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- ❖ Load only necessary information on laptop computers, thereby limiting the amount of information a thief could access should the equipment be stolen.
- ❖ Keep your laptop computer either with you or in a secure place at all times; never check it as luggage when traveling.

Preventive steps like security systems, corporate ethics policies and fraud hotlines help, but one of the most effective protection tools may be one you already have – Fidelity & Crime Insurance Policy. This coverage is vital for smaller organizations, which have fewer resources available for preventions and can't easily sustain a theft loss.

Affiliated FM Global had been the Fidelity & Crime carrier for LGIT members for the past several years, but due to market conditions it is exiting from the Fidelity & Crime market. Effective September 1, 2002, Travelers Casualty & Surety Company of America became the Fidelity & Crime carrier for LGIT. If you did not renew your Fidelity & Crime policy or wish to obtain a quotation, please contact Ellen Nudd, Underwriter, at 410-312-0880 or 1-800-673-8231. No insurer can replace the trust that's lost when an employee is discovered to be dishonest, but prompt financial reimbursement can help ease the situation – and protect your organization's bottom line.

*Ellen Nudd, Underwriter
Loss Control & Underwriting*



Future Health: What You Need To Know

LGIT Health Benefits Services recently partnered with CareFirst Administrators. One of the benefits LGIT and their members will derive from this union is the ability to offer all members the services of FutureHealth.

FutureHealth was founded in 1992 with just one client and one compelling question: How do you do managed care that really makes a difference? Ten years later, FutureHealth has more than 500 clients and over 1.5 million members and a definitive answer: Manage what matters. By focusing on a small percentage of members who generate the largest percentage of costs, they have been able to do just that.

There are several programs that are brought to this partnership to help members and their

dependents manage their health needs. One such program is **Population Risk Management** This program is designed to help members who are at high-risk, teach them to work with their doctors, comply with treatment plans, and become active in their own healthcare. Early risk identification, compliance with medical programs and follow up are proven tools for reducing the costs of healthcare and benefits the members/employees, providers and employers alike.

Another program, **FutureFootsteps**, works directly with moms-to-be. More than one in three pregnant women develop complications. Future Health realizes that every expectant mother is likely to be the first person to realize something isn't right. And if given the right information and education, she can take action. A maternity nurse is assigned to the mom-to-be to coach her through her pregnancy and give helpful hints such as how to relieve low back pain or deal with the emotional ups and downs of pregnancy. Our new program will help reduce the occurrence of premature birth through early intervention and assessment. The result—a healthier pregnancy and a healthier baby.

Nurse Advice Line is a call center where patients, members or employees get the healthcare information they need. A nurse is available day or night for any questions you may have. What do I do when I can't get my child's temperature down? I twisted my ankle, how should I treat it? Better advice than from your best friend's mother!

You can also use the **Audio Health Library**, which is available 24/7. This library contains topics concerning nutrition, cancer, fitness, diabetes, aging, etc. It is available to anyone who wants to know more about a certain disease or condition.

These are just a few of the programs offered by our new partnership with FutureHealth. These programs empower the members to take care of themselves. The goal is for the participant to understand their disease or condition, have knowledge of how to control it, have self-management and survival skills to teach them what to do when something is wrong.

These programs are available to any member enrolled in a medical plan with the health pool. They are all free of charge and totally confidential. You can access these services by calling (800) 315-2031 or (410) 842-1915.

*Marsha Dixon
Account Manager
Health Benefits Services*



Training Schedule 2002-2003



Basics of Risk Management

(Academy of Excellence elective)

November 7, 2002

Western Maryland

Public Employee Safety Association - Safety Committees

November 8, 2002

LGIT Offices

Emergency Vehicle Operator SUV

May 28, 2002

MPCTC

Emergency Vehicle Operator

MPCTC

June 2-4, 2002

For more information call Jennifer Bates
1-800-673-8231 or JenniferB@lgit.org.

Jennifer Bates

*Loss Control & Training Coordinator
Loss Control and Underwriting*



LGIT's 15th Anniversary!

Come celebrate our 15 years of service! LGIT's Annual Meeting will be held at the Radisson Hotel in Annapolis (formerly Holiday Inn) on November 18th, 2002 from 8:15am - 2:30pm. Great food, awards, and door prizes will be among the many things happening that day! So come on out and join us!!!



LGIT Welcomes Its Newest Employees



Patricia Olson

Claims Assistant

She comes to LGIT with five years of office experience, including reception, data entry and general office duties. She assists the claims adjusters and analysts with data base support and word processing.



Carrie St. Jean

Administrative Assistant

She provides administrative support to Health Benefit Services. She came to LGIT with 10 years customer service/administrative experience and five years recruiting/ staffing experience. Prior to working for LGIT, she recruited for Magellan, CareFirst BlueCross BlueShield and MedStar Health.

Congratulations to our Loss Control & Training coordinator, Jennifer Myers. Jennifer became Mrs. Kyle Bates on August 25th, 2002. She and Kyle were married at The Castle at Maryvale in Baltimore. We wish them every happiness for the future!



The LGIT News

A quarterly newsletter free to all members and affiliates of the Local Government Insurance Trust, Columbia, MD.

Read this issue and past issues of the LGIT News on-line at www.lgit.org.

1-410-312-0880 / 1-800-673-8231