

Continued from page 2

Did you know that there are coverage limitations for the Members' employees pertaining to bodily injury or personal injury arising out of employees providing or failure to provide health care services? LGIT's Primary Liability Scope of Coverage does provide coverage for services provided by a certified medical technician or emergency medical technician, but physicians employed or contracted by a local government are excluded from the Primary Liability Scope of Coverage. Therefore, medical directors must have their own Medical Malpractice Insurance Coverage.

(Malpractice policies typically cover the corporate entity, individual physicians employed by that entity and other employees. However, the policy is a specified-peril policy that generally covers injury only if it arises from a medical incident. A medical incident is typically defined to mean an act, error, or omission in providing or failing to provide medical services to a patient.)

In a world that is becoming more and more litigious, local governments must be aware of their potential risks. While LGIT's Primary Liability Scope of Coverage provides protection for the local governments from claims arising from alleged bodily injury, personal injury and property damage liability arising out of their operations, there are some complex and specialized risks, such as Medical Malpractice, that are not covered by the Primary Liability Scope of Coverage. In these cases, additional coverage may be required. LGIT can help you to find the appropriate coverage in most such cases. Call us for more information.



Ellen Nudd
Underwriter



The LGIT News is a quarterly publication and is available free to all members of the Local Government Insurance Trust, Columbia, Maryland. You can access this issue and past issues of the LGIT News online at www.lgit.org
410.312.0880 1.800.673.8231

Upcoming LGIT Seminars

LGIT invites member employees and public officials to take advantage of the loss control seminars offered near them.

Regional Defensive Driving Classes (DDC).

11/29/05 Lexington Park,
St. Mary's County

11/30/05 Lexington Park,
St. Mary's County

Emergency Vehicle Operations Class (EVOC) 3 day class

11/16-18/05 Training Commission,
Sykesville

Beginning Supervisors Training

12/5/05 Snow Hill, Worchester County

Police Liability Issues

Date to be announced
LGIT Headquarters



The following courses are approved for the IGS Academy of Excellence In Local Governance

Property Loss Prevention Boiler & Machinery Inspections Accident Investigation / Self-Inspections (Elective)

10/26/05 Hancock, Western Maryland

10/27/05 LGIT Headquarters, Columbia

11/8/05 Denton Public Library,
Caroline County



Basics of Risk Management (Municipal & County track Core Course)

11/17/05 LGIT Annual Meeting
Turf Valley Hotel and Conference
Center, Ellicott City

Open Meetings (Municipal & County track Core Course)

11/17/05 LGIT Annual Meeting
Turf Valley Hotel and Conference
Center, Ellicott City

For seminar descriptions, directions and registration forms, visit www.lgit.org.
For more information, call 1-800-673-8231 or contact me,
Larry Bohlen,
Training Coordinator
lbohlen@lgit.org.



Larry Bohlen
Loss Control
Training Coordinator

Our New Hire!

LGIT would like to say welcome to our new receptionist, Ilene Savage. Ilene spent a great deal of her career as a corporate trainer and English/Drama teacher. She received her BA from the University of Maryland in College Park.



Ilene Savage
Receptionist

Sponsoring Organizations



The Local Government Insurance Trust will provide coverage and risk management services at stable and competitive rates through an organization that is owned by its local governments.

Annual Meeting

Will we see you there??

The annual meeting is scheduled for Nov. 17, 2005. The meeting will be held at the Turf Valley Hotel and Conference Center in Howard County. It's number 18 and we want to make the Meeting special. We should be able to give you a good overview of our highly successful (\$\$\$\$) FY 05, and provide you with some idea of what our direction is for the Trust. I would like to see each of our members represented at the meeting. If that happens, we would have a room full of almost 200 people and that's if only one from each of our participants shows up. If everyone sends more than one person we would have to take over the grand ballroom of the hotel to accommodate everyone. Not only that, but the parking lot would be full and golf shop would be complaining about a lack of parking due to the mob of people attending that LGIT meeting at the hotel. Can you imagine??

The meeting will be the usual fine dynamic day of nothing but excitement provided by your Trust. An opportunity to meet the Trust board members, see how well the Trust continues to do, and meet and discuss with various members of the LGIT Trust staff, of course.

For the year ending on June 30, 2005, we had 1581 claims filed and 1689 claims closed. We paid \$4.7 million in claims. We added three new members and had membership retention of 96% with a total of 171 member participants.

We trained 1487 local government officials more than any previous year. And the best news is that we finished the year with a surplus of \$2.7 million.

Fall, 2005

If for no other reason, you should come to the Annual Meeting to receive your copy of the Trust year end Annual Report that will offer even more details about the year we just completed.

I welcome your input on our efforts. They are developed in mind to help your local government save \$\$\$\$. But we don't always know how we're doing. So give us your feedback on what we've done and offer us some suggestions on what you may want from us with these programs.

Until the next time,
here's to staying out
of court.



Jon Burrell
Executive Director

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The Public Works Liability Series

This is the first of a series of articles addressing public works liability.

The Local Government Tort Claims Act requires local governments to indemnify employees for negligent acts committed during the performance of their duties for the local government. Although Maryland local governments are immune from liability for governmental functions performed for the benefit of the public, there are some long-standing common law exceptions to that immunity: the maintenance of streets, sidewalks, sewer and storm water facilities. This exception is referred to as “public works” liability. Consequently, a local government may owe a duty to an individual for its failure to maintain its streets, sidewalks and sewers.

What is negligence? Negligence is the failure to exercise a degree of care that circumstances reasonably require. A local government may be negligent if the following elements are established:

- ❑ A duty is owed to a claimant because the local government owns, controls or maintains the occurrence location
- ❑ The local government failed to perform the duty,
- ❑ The breach of the duty is the proximate cause of the injury or damage alleged,
- ❑ The claimant sustains damages.

A breach of duty can occur only if the local government had actual or constructive notice of the defective condition which was the cause of the occurrence. Actual notice occurs when the local government either created a dangerous or defective condition or is made aware of the condition through citizen complaints, area inspections or other incidents. Constructive notice can be established through evidence that the defective condition was present for such a period of time that if the local government had been exercising reasonable care it would have known of the condition. If the local government

did not have notice of the defect, it cannot be found negligent.

To document notice, all local governments must record citizen complaints which report defective conditions. Citizen complaints should be received by and recorded in one central location. This can be accomplished by recording the complaint in a computer program or simply by using a handwritten grid-like log which documents the (1) name, address and telephone number of the citizen, (2) date of the report, (3) location of the defective condition, and (4) nature of the defect. After the defect is inspected and repaired, the log should reflect the date and nature of the repair as well as the identity of the individual employees who completed the work. It is not uncommon for claimants to assert that the defective condition had previously been reported to the local government. Without a method of documenting complaints it is really impossible to refute assertions that the defect had been reported and the local government had actual notice of the defect. Logs must be kept for a period of three and one-half years.

Additionally, local governments must show due diligence to maintain streets, sidewalks, and sewers by implementing procedures to make routine inspections to detect defects and to perform routine maintenance. Inspections and maintenance programs and repairs must be documented to reflect the date of the work, the nature of the work and the identity of the individuals who completed the work. If a defective condition is noted and cannot be repaired immediately, the public works department should take steps to warn the public of the danger and make temporary repairs, if possible.



Sherri Butler
Director of Claims Services

Primary Liability Medical Malpractice “Exclusion”

As a result of 9/11, the Maryland Emergency Management Agency (MEMA), has taken a lead role in the statewide planning for health and medical preparedness, which also includes all hazard response and homeland security issues. MEMA’s new role has propelled an increase in the number of local governments’ Emergency Medical Services (EMS).

The essential purpose of an EMS system is to reduce death and disability due to injuries and other emergent medical events. One of the key components for EMS systems is medical direction. This component ensures that emergency medical care is rendered in a manner consistent with standards of quality medical practice via involvement of physicians with appropriate knowledge and experience in the delivery of emergency care.



As you, the local governments, review the EMS system goals and objectives, have you identified the resource needs of the EMS medical director, such as Medical Malpractice Insurance Coverage?

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Learn How to Protect Your Computer from Intruders

The following article was compiled by Jeffrey D. Lynch, CPCU Society assistant vice-president information systems.

The other day, while doing my best to keep from cursing the vile attempts of the Internet vandals, goons and thieves, I ran across a web page that offered very good information on how to protect yourself and your company from attacks so common today.

Since the page recommended forwarding along to others, I decided to pass along the kernels of the “Nine Rules to Protect Your System.” Knowing that many items sent by e-mail wisely get deleted when you do not expect something from the sender, or you do not recognize the sender, I would like to introduce you to this website and its pertinent content. The site has good computer security information for all who connect their computer to the Internet and send and receive e-mail, as well as download items from websites.

Here are the nine rules (abbreviated for publication with the permission of the web author, C. Zach Hildago), followed by some recommendations from this site for personal firewall, ad ware, spybot and Internet vulnerability testing. I have also included the addresses of a few other sites that provide good information on protecting your computer and your personal information from intruders and thieves.

- ❑ **Rule 1: Mind your passwords.**
Under no circumstance should you ever use real words or combinations of real words, nor should you use numbers that have any significance to you, such as your birth date.
- ❑ **Rule 2: Use encrypted connections.**
The Internet tools most commonly used on workstations and servers are inherently insecure.

Sadly, authentication is typically in plain text, which makes life easy for hackers using packet sniffers to automatically grab scores of plain text passwords from Internet noise while they sleep.

- ❑ **Rule 3: Hide!**
Cloaking your computer’s Internet presence via a firewall is the first line of defense. All hackers use scanning tools to quickly find weaknesses in a computer’s Internet interfaces.
- ❑ **Rule 4: Don’t trust anybody!**
Be very careful about what programs you download from the Internet. It’s not too paranoid to make it a rule to never trust anything from the Internet, as even the biggest web site could be subverted by hackers and you wouldn’t notice.
- ❑ **Rule 5: If you’re managing a server, limit what other users can do on the system.**
From limiting them to certain areas of the file system and which applications they can run to limiting their memory and process usage, there are many things you can do to reduce the serious risk posed by reckless users.
- ❑ **Rule 6: Keep your system up to date.**
Vulnerabilities are continuously being found in popular programs and operating system kernels, some of which might allow an intruder to gain root access to your system.
- ❑ **Rule 7: Disconnect from the Internet** when you’re not actually using it.
- ❑ **Rule 8: Don’t continue using a computer** that you know has been compromised by hackers.

- ❑ **Rule 9: Use every security mechanism you can,** not just one or a few. They serve different purposes and thus compliment each other.

Tools this site recommends to help protect your computer include:

- Personal firewalls from Norton, McAfee, BlackIce and a host of other reputable companies.
- Anti-spyware protection from Spybot-Search and Destroy or AdawareSE. These should both be installed and run daily. Free versions are available for personal use.
- The site also has a link to Shields Up, which is a site that will test your computer’s vulnerability for free and give you a report.

The source of information is <http://webweevers.com/protection.htm#rules>. The information presented in this article is a very abbreviated version of the complete information. I urge you to take some time to visit this site.

Other good protection sites include an information page from the Federal Trade Commission, which is available at <http://www.ftc.gov/bcp/menu-internet.htm>. Also:

www.staysafeonline.info/home-tips.html
www.securitypipeline.com
www.firewallguide.com/overview.htm

To find more, go to Google and type in “personal computer security” or “computer security” and be prepared for a lot of reading.

Save this article for future reference. I hope it will keep you from becoming a victim and make you a more secure Internet user.



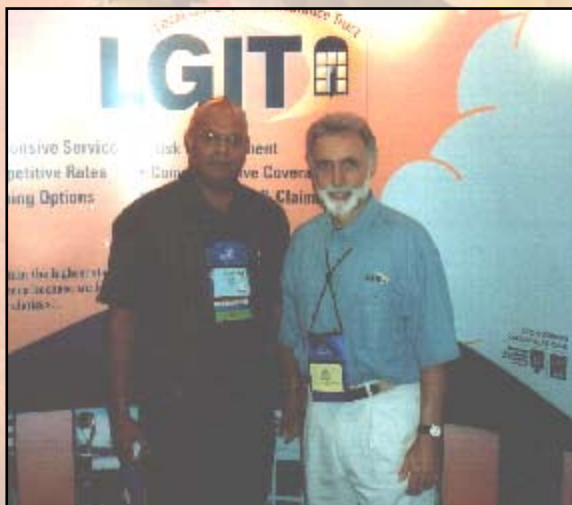
Michael Becker
Systems Engineer



LGIT Board member & MACo President, Nelson Bolender with Jon Burrell.



Queen Anne's County Commissioner, Gene Ransom, III, LGIT Grand Prize winner with Larry Bohlen, LGIT.



MACo Board member and Carroll County Commissioner, Perry Jones, Jr. with Jon Burrell.

LGIT Presence at the MACo Convention Ocean City, MD. August 2005

Hot Air Ballooning is Excluded from the LGIT Scope of Coverage

The LGIT Scope of Coverage excludes coverage from loss arising out of the ownership, maintenance or use of aircraft, and specifically excludes hot air balloons. See LGIT Liability Scope of Coverage: Coverage Part I General Liability, Section III, Exclusions, paragraph F:

“Bodily Injury or Property Damage arising out of the ownership, maintenance, use or entrustment to others of any **Aircraft**, railroad car, railroad engine, Auto or Watercraft, owned or operated by or rented or loaned to Member. Use includes operation and Loading or Unloading.”

and Section IV Definitions – Aircraft

“**Aircraft** means any airplane, helicopter, glider, light flight, **balloon, blimp** or any other craft designed to fly in air or space.”

LGIT has learned of an increase in popularity among its members regarding hot air balloon activities. These activities are conducted with or without passengers and include:

1. Free flight (including races)
2. Tethered flight (including balloon glows — the art of firing a hot air balloon's burner to illuminate the balloon while the balloon is tethered)



Hot air balloons are considered to be aircraft by the Federal Aviation Administration (FAA) and their operators must be licensed by the FAA.

Although LGIT does not cover this exposure, those members who are considering involvement with this type of activity should:

1. Require proof of the owner/operator's aircraft liability insurance.
2. Obtain a special events insurance for itself.
3. Require that passengers, if any, sign an assumption of risk and release of liability (an exculpatory agreement drafted by your attorney).
4. Prohibit passenger flights for minors.
5. Require proof that the pilot holds a valid commercial balloon pilot's license.
6. Require proof that the craft has an air worthiness certificate and current annual inspection.
7. Require that the balloonist comply with all FAA rules and regulations.
8. Have contingency plans for problems (such as fire, entanglement, hard landing) that may arise.
9. Prepare plot plans and graphics to locate the intended landing area, intended flight paths, and designated emergency landing sites.
10. Check on the predicted weather conditions in the areas of the launch site, flight paths and landing site. Ground level wind should be less than seven knots.
11. Prior to launch and during operation of the balloon, communication between one designated ground contact person and the pilot should be established and maintained on an approved radio.
12. A chase vehicle should be assigned with no other duty than to support the balloon crew.

13. During an emergency, a designated balloon ground crew member will take charge and coordinate rescue operations. Either 911 or the designated emergency number for the area should be called immediately.



Vance Petrella
Manager
Loss Control

LGIT's 18th Annual Meeting Turf Valley Hotel and Conference Center in Ellicott City, MD

November 17, 2005

Registration starts at 10:00 am
Welcome/Introductions at 10:30 am
Hope to see you there!

Look for your invitation in the mail!

Coming from Baltimore:

Take I-695 to exit 16 (I-70 West toward Frederick). Follow I-70 to exit 83 (Marriottsville Rd.). At the stop sign turn left onto Marriottsville Rd. At the first traffic light, turn left onto Route 40. Go 7/10 mile and turn left onto Turf Valley Rd. Turf Valley's entrance will be on your left.

Coming from Frederick:

Take I-70 east towards Baltimore. Take Exit 82 - Ellicott City / 40 East. Go through one stop light. Continue Approximately 7/10 of a mile and turn left onto Turf Valley Road.

Coming from Annapolis:

Take your shortest route to I-695 and use the Baltimore directions to Turf Valley.

Mere Fact That Pedestrian Fell Within the Geographic Boundaries of a Publicly Owned Park Did Not Establish City's Governmental Immunity from Negligence Suit

In a recent opinion, the Court of Special Appeals of Maryland ruled that the mere fact that a pedestrian fell within the geographic confines of a city-owned and city-maintained public park did not automatically establish the city's defense of governmental immunity from the injured person's negligence suit. In *Whalen v. Mayor & City Council of Baltimore*, No. 00862, Sept. Term, 2004, Sept. 16, 2005, a blind pedestrian fell into an uncovered utility hole while walking her guide dog within the boundaries of a city-owned and city-maintained park. She sued, claiming the city was negligent in failing to assure that the hole was properly covered. The city argued that it was entitled to governmental immunity, and asked the court to enter judgment in its favor. The circuit court ruled in favor of the city, and the injured pedestrian appealed.

On appeal, the Court of Special Appeals reviewed the concept of governmental immunity. Beginning in the early 20th century, the Maryland Court of Appeals first recognized that local governments have immunity in certain types of tort actions based on activity categorized as "governmental" but have no immunity in tort actions based on activity categorized as "private", "corporate" or "proprietary". However, courts have had difficulty in determining whether the particular acts of a municipality should be classified as governmental or proprietary.

Generally, where the act in question is sanctioned by legislative authority, is solely for the public benefit with no profit or compensation flowing to the municipality, and is for the benefit of the public health and welfare, the act is considered governmental in nature.

Mayor & City Council of Balt. v. State, Use of Blueford, 173 Md. 267, 273 (1937). If, on the other hand, the activity is one relating to the accomplishment of private corporate purposes in which the public is only indirectly concerned, the activity will be deemed non-governmental, or proprietary.

To be sure, a municipality's operation and maintenance of a public park is generally considered to be a governmental function. As a result, a municipality ordinarily is entitled to governmental immunity and is not liable for neglect in regard to the maintenance or management of a public park.

It is equally clear, however, that a municipality has a "private, proprietary obligation" to maintain, in a reasonably safe condition, its streets, sidewalks, and areas contiguous to them." *Higgins v. City of Rockville*, 86 Md. App. 670, 678 (1991). Thus, it has long been held that a municipality is not immune from a negligence action arising out of its maintenance of its public streets and highways.

In the *Whalen* case, it was undisputed that the hole into which the pedestrian stepped was located within the confines of the park. The hole, however, was located in a narrow strip of grass that separated the public sidewalk from a fenced basketball court. The sidewalk, which was outside the park, abutted the public street. After a detailed review of earlier cases, the Court of Special Appeals concluded that even if an area is within the confines of a park, the use and maintenance of the area may be part of municipality's proprietary responsibility.

Based upon the close proximity of the grassy area to the sidewalk, the court concluded that the city had reason to anticipate that a pedestrian would, in the exercise of due care, leave the sidewalk, located outside of the park, and walk on the grassy area located within the park. In other words, the court determined that the grassy area had a "dual" or

"hybrid" purpose as being not only part of the park, but also an area for pedestrian travel.

As such, the court concluded that although the city's duty to maintain the park is governmental, its maintenance of sidewalks, streets, and contiguous areas is proprietary. And, since the grassy area served a dual purpose, a jury could reasonably conclude that someone on the sidewalk could meander off, without expecting to fall into an open hole. Accordingly, if the jury were to find that the grassy area was one prone to pedestrian travel due to its proximity to the sidewalk, and, therefore, part of the municipality's proprietary responsibility, the municipality would not be entitled to governmental immunity.



John F. Breads, Jr.
Director of Legal Services

Happy Autumn!



Fall Training Grant Awards

LGIT is pleased to announce the following fall 2005 training grants awarded by the Risk Management Committee:

Calvert County to attend a conference for Commission on CALEA Accreditation;

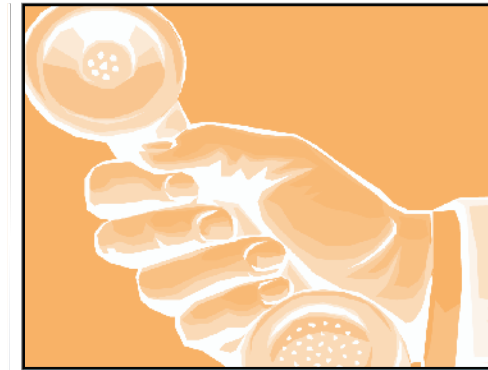
Caroline County to develop a special emergency response team;

Carroll County for staff to attend training for Principles of Occupational Safety and Health.

Grants awarded FY-2006 total \$8,860.00.

Congratulations to all the grant recipients for their continuing training and loss control efforts.

The LGIT Training Grant Program was developed to provide assistance to Members of the Trust who wish to assist their employees with obtaining education and training to advance their skills, to reduce liability claims and property damage. Grants are only awarded if they are intended to have a positive impact on the Member's insurance coverage held with LGIT. Grant applications are reviewed and awarded three times a year by the Risk Management Committee and are limited to one grant per local government per fiscal year. For more information concerning the Training Grant Program contact Larry Bohlen, Training Coordinator at 800-673-8231 or lbohlen@lgit.org.



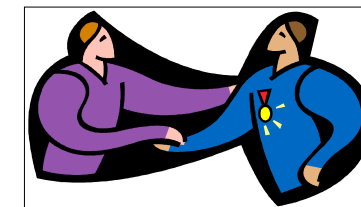
Employee Law Hotline

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

Hotline 800.845.8055 or 410.625.5981

Question - Does a local government have to disclose to a job applicant any specific reasons why the applicant was not selected for the position applied for?

Answer – No. A local government does not have to disclose any specific reason why an applicant was not selected for the position which he/she had applied.



LGIT Congratulates

Congratulations go to the following LGIT Members for their loss control and Risk Management efforts:

Queen Anne's County – For hosting a regional Risk Manager's orientation for Loss Control development and COPE training for County department heads to help LGIT in the property valuation process and for hosting a regional "Beginning Supervisor" workshop.

Town of Boonsboro – For their outstanding corrective efforts to implement Hazard Evaluation recommendations made by LGIT Loss Control and Risk Management staff.

What's New!

LGIT Training Brochures Now Online

In an effort to help Trust members to take full advantage of all of LGIT's Loss Control and Risk Management programs, training brochures are now available online through the LGIT website. Brochures outlining current classes and seminars can be accessed by searching the LGIT's Home Page Training drop down menu under Training Schedule and clicking on the class. Brochures have the class date, time, location and additional information concerning the class and the benefits for members to attend.

We encourage members to visit LGIT's website, www.lgit.org and see all that LGIT has to offer.

