

## FLOOD PERILS

Floods are the most devastating insurable peril in the United States and are most often caused by melting snow, overflowing rivers and tributaries, and in coastal areas.

### Pre-event Actions

1. Building sites should be carefully evaluated for flood potential
2. Existing structures in flood zones should be analyzed for their ability to withstand normally expected events
3. Flood shields or barriers, use of temporary diking (or landscaping that incorporates diking features), shutters for building openings, and sandbagging (plan sandbagging layout before flood situation) should be provided
4. Emergency supplies should be kept on hand, portable power equipment to maintain vital utility services should be available, and main electrical service equipment should be placed on upper floors of buildings away from historical flood stage heights
5. Many floods indirectly cause fires that originate in electrical shorts, flammable liquids floating on top of water, and flammable gas escaping from broken piping. Therefore, other pre-event actions to be considered are:
  - No open flames or lights should be allowed near or in a flood exposed structure
  - All flammable gas piping (whether utility or process services) where exposed to mechanical damage should be protected, and shutoffs or disconnects should be installed



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](http://www.lgit.org) or call 410.312.0880 1.800.673.8231

1. above normally expected flood stage heights and should be accessible
2. Floodwater should be prevented from entering buildings either by having no openings at lower levels or by covering those openings against water entry

### Post-event Actions

1. Personnel should be assigned to implement emergency action plans, such as installing barriers and operating pumps, repairing damage, and disconnecting utility services.

## LGIT Congratulates!

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

**Cambridge** — for helping host a Flagger Certification Training; 48 LGIT members attended

**Washington and Queen Anne's Counties** — for aggressively working on their property surveys

**Calvert County** — for completing nearly 180 COPE surveys, an outstanding number for property

## Upcoming Seminars

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

### Flagger Training

5/11/2006 Elkton (Cecil County)

### Drug Testing & Employment Issues (Online)

Spring 2006

### Computer Security for Local Governments

May 2006

### EVOC — 3 day class

5/24/06-5/26/06 Training Commission, Sykesville (Carroll County)

For seminar descriptions, directions and registration forms, visit [www.lgit.org](http://www.lgit.org). For more information, call 1.800.673.8231 or contact Larry Bohlen, Training Coordinator at [lbbohlen@lgit.org](mailto:lbbohlen@lgit.org).



Larry Bohlen  
Loss Control Training  
Coordinator

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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.



Spring

2006

## Wind Perils

Although we are still suffering from the aftermath of Katrina, spring is here and that means many of us must once again be on the alert for storms and violent winds.

Violent winds generally are associated with windstorms, thunderstorms, hailstorms, hurricanes, and tornadoes. The Atlantic coastal zone is one of the areas most likely to incur severe violent wind damage. While roofs are the most susceptible to wind damage, other features are also exposed. Wind-blown debris, unfastened materials and inadequate support systems also affect windows, walls, towers, and buildings under construction.

Tornado season is generally considered to occur from March through August, although tornadoes can occur any time of the year. Hurricanes strike the Atlantic seaboard between June and November. Thunderstorms may strike anywhere at any time.

The best time to prepare for damaging winds is before they occur by considering the design of new buildings and the retrofitting of older buildings.

The following actions should help to minimize damages:

### Pre-Event Actions

- Structural design to withstand high winds
- Careful selection of building sites outside flood zones and tidal surges
- Proper maintenance of roofs, supports for outside structures and tie-downs for

structures of inferior construction, approved materials and methods for securing building roofs to wall and support structures (i.e., hurricane anchorage)

- Material stored outside should be moved inside a substantial structure or protected in some way against high winds and localized flooding
- Boarding and taping of doors, windows and other openings
- Emergency power equipment should be available to provide utility services, operate pumps and maintain protection systems

Once the event has occurred, you can expect shortages to develop along the lines of construction material availability. In addition, training personnel to respond quickly should be part of a member's risk management planning.

### Post-Event Actions

- Material such as plywood panels, plastic sheets and tarpaulin should be on hand to cover building openings such as windows and skylights and to make emergency repairs. Sandbags and flood shields should be available and designed, if possible, to protect buildings and equipment from high water.

*Continued on page 5.*

*Please remember to Whitelist LGIT.ORG. Great information doesn't like to end up in the spam bucket!*

## LGIT Board of Trustees

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## From the Boardroom...

*The Board of Trustees met on January 19, 2006, and took the following actions:*

- Approved the scope of coverage that would extend PIP protection to a “pedestrian” that is struck by a “covered auto.” The current PIP Endorsement does not specifically state that “pedestrians” are entitled to PIP benefits. The revised endorsement will clearly state that “pedestrians” are entitled to PIP benefits making the LGIT endorsement more competitive.
- Approved the creation of a Life Saver’s Award. The Life Saver’s Award, to be given on an annual basis, would recognize the actions of a LGIT member’s employee that saves a life, or an individual who saves the life of a LGIT member’s employee.
- Approved the Building Committee’s recommendation to proceed with the purchase of the building at 7225 Parkway Drive, Hanover, MD, to be used as LGIT’s headquarters, pending a 60 day feasibility study, which will include an environmental, architectural and engineering assessment.

*The Board of Trustees met on March 23, 2006, and took the following actions:*

- Approved the funding of the CALEA credit from surplus funds. A credit of 10% of Law Enforcement Liability premium fees will be extended to those members whose law enforcement agencies have met the rigorous CALEA accreditation requirements.
- Approved the deletion of the Year 2000 Date Data Problem Exclusion Endorsement. The current Year 2000 Date Data Problem Exclusion Endorsement is now obsolete, and therefore, will be deleted from the Scope of Coverage.
- Approved the No Fault Sewer Backup Scope of Coverage change. This endorsement provides for “no fault” sewer backup liability claims. The new wording requires the member to maintain its lines as described in the endorsement or the claim could be denied. Additionally, this requires the underwriters to accept or reject our member’s request for this endorsement if the member cannot adequately prove it will

abide by the terms of the endorsement. The new wording would require that the member will install, or cause to be installed, check valves and backflow prevention devices where needed, including locations where storm drains empty into sewers and other recognized “hot spots.”

- Approved the Self Insurance Program Excess Coverage Endorsement Scope of Coverage Change to include an extension of coverage that includes pro-rata payment of claims expenses.
- Approved a one year pilot project to allow 50% deductible reimbursement for employment practices liability claims in those instances in which the member has obtained and implemented legal advice from the Employment Hotline Added Value Benefit Programs.

Approved the Member Retention Program which included such issues as: (a) the period of time to be allowed a member to correct loss control deficiencies; (b) the inclusion of references to the Trust Agreement; and (c) rewording to more clearly reflect the intent not to cancel member coverage, but to retain members by helping them to improve their loss experience.

- Approved the revised Charter for the Finance/Audit Committee.
- Approved the slate of candidates for nomination to the Board of Trustees for a term of three years beginning July 2006, pending approval by the members, as follows: Tom Dillingham, Gary Mullich, and Hilary Spence are re-appointments. One new nomination is John Miller, Middletown. Mr. Routzahn would no longer be serving on the Board of Trustees, as he would be replaced by John Miller, pending member’s approval.

## The Trust Welcomes A New Participant to Its Pools

We’re pleased to announce that the Somerset County Library System, sponsored by Somerset County, has joined the Primary, Excess, and Property Pools, effective March 16, 2006.

*Sandy Tedrow  
Executive Secretary*

## Governmental Immunity Unavailable to Local Governments in Contract Actions

Under Maryland’s Local Government Tort Claims Act, a local government can rely on the defense of governmental immunity if the function being performed by its employee was “governmental”, for example, the operation of a police department, as opposed to “proprietary” or “corporate”. *See, e.g., Godwin v. County Comm’rs, 256 Md. 326, 334-35 (1970); Baltimore v. State, 173 Md. 267, 271-72 (1937).* While this “governmental” immunity of counties and municipalities is much narrower than the immunity of the State, the immunity of counties and municipalities nevertheless is derived from the State’s sovereign immunity. *See Bradshaw v. Prince George’s County, 284 Md. 294, 299-300 (1979); Godwin, 256 Md. at 334-35; Cox v. Anne Arundel County, 181 Md. 428, 431 (1943)* (“When the State gives a city or county part of its . . . power to exercise, the city or county to that extent is the State.”). The question remains as to whether the defense is available only in tort claims against local governments. In other words, if a local government is sued for breach of contract, can it assert the defense of governmental immunity? The answer is no. Under Maryland law, unless otherwise specifically provided by the laws of Maryland, a municipal corporation, or a county, may not raise the defense of sovereign, or more appropriately, governmental immunity in the courts of this State in an action based upon a written contract executed on behalf of the local government. This prohibition extends to every “officer, department, agency, board, commission, or other unit of the local government.” *See Maryland Code, Art. 23A, § 1A; Art. 25, § 1A; and Art. 25A, § 1A.*

Although local governments may not be able to rely on the defense of governmental immunity in contract actions, it is important to note that punitive damages are unavailable to plaintiffs in such actions, just as they are unavailable against local governments in tort actions. Finally, and perhaps indicative of a legislative “trade-off” for precluding the governmental immunity defense, contract claims against local governments are barred unless the claimant files suit within one year from the date on which the claim arose or within one year after completion of the contract giving rise to the claim, whichever is later. In light of this lack of immunity, local governments should review all contracts carefully prior to signing and make sure it is very clear to the employees who does and who does not have authority to sign on behalf of the local entity.



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

## Mark Your Calendars!

### LGIT’s 19th Annual Meeting

**Turf Valley Resort  
and Conference Center  
Ellicott City, MD 21043**

**November 13th, 2006**

## 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 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:

A local government has an employee who resigned shortly before a termination hearing. Can the local government simply advise the unemployment officer that the employee resigned without providing specifics regarding the circumstances under which this employee resigned?

### Answer:

YES. The local government is not under an obligation to disclose the circumstances. It can simply advise the unemployment investigator that the employee voluntarily resigned from his/her position.

## LGIT's Oil Can Award Recipient, MSAE Award and AGRIP Award Photos



Jon Burrell, Executive Director, presenting the "Oil Can Award" to the team player of the year, Sheryl Browning, Claims Technician.



LGIT has been honored with the 2005-2008 AGRIP Award. Here with the plaque are Scott Soderstrom, Underwriting Manager; Jon Burrell, Executive Director; and Hank Schomburg, Director, Loss Control and Underwriting Services.



Larry Bohlen, LGIT Loss Control Training Coordinator; Claire Jefferson, MD Chapter, American College of Emergency Physicians and president of MSAE; and Jon Burrell, Executive Director of LGIT.

### Looking Backward

or

#### How to Reduce Backup Accidents

One of the three most common auto claims submitted to LGIT is a member vehicle backing into something.

##### Some Examples Are:

- Backing out of a driveway and hitting a parked car or backing into the path of an oncoming vehicle
- Backing or turning in a parking lot striking another car or an object
- Backing up to leave a parking space and failing to see the car behind

Even though these accidents are commonplace, they are nearly always preventable.

Expensive Auto Property/Liability claims can be avoided by teaching drivers of local government vehicles to be cautious when backing up. (Even though employees of all local government departments, whether Public Works, Law Enforcement, Administration or other departments drive, we often we don't think of our time behind the wheel as being in the workplace.) We need to start considering the driveway, garage, parking space, and street as part of our everyday workplace and carry our safety and loss control efforts with us.

Here are some basic tips for backing safely.

##### You Can't Avoid It If You Can't See It

Visibility is always of utmost importance when driving and backing is no exception. Driving in reverse is not easy and it's often uncomfortable to twist and strain to see out the rear window. Certain vehicles may have more severe "blind spots" than others. Passengers and cargo in the vehicle may impair your ability to see clearly.

##### Easy Does It

Always backup slowly. It is much easier to control a vehicle when moving at a speed less than 3 mph. The driver backing needs to be constantly looking to the rear, the right and left when backing into the path of traffic.

### Size Doesn't Matter

It doesn't matter if you are driving a sedan, a pick up or a larger vehicle. It can be difficult to see what is behind you. The pedestrian or fire hydrant at your rear bumper can be hard to see no matter what type of vehicle is being driven.

##### Keep The Windows Clear

An unobstructed view is imperative when backing:

- Keep packages or other cargo below the driver's line of sight
- Keep the rear window ledge clear of objects
- Clean all vehicle windows regularly, inside and out
- Replace wiper blades (don't forget the rear one if the vehicle is so equipped)
- Ask passengers to give the driver a clear view

##### Eliminate Blind Spots

Drivers must pay extra attention to a vehicle's blind spots. A blind spot is just that: an area of the vehicle that does not allow the driver to see clearly what or who is there. This is very important to keep in mind if you drive different vehicles at different times. Drivers need to make the necessary and proper adjustments every time they get into a vehicle.

Here is how:

- While sitting squarely in the driver's seat, adjust the full rear-view mirror so you can see clearly out the rear window without moving your head.
- To adjust the side mirrors, lean toward the driver's side window until you nearly touch the glass and adjust the mirror until the side of your vehicle is just out of sight; do the reverse to adjust the right side mirror.

##### Backing Up

- Check in all directions to make sure the way is clear.
- Always turn and look directly behind you while backing.
- Yield the right of way to pedestrians, cyclists and approaching traffic.

- Steer with one hand, while looking out the rear window and scanning side to side.

##### Parking Spaces

Special care must be used in addition to the directions above:

- Back out slowly to make sure other vehicles or pedestrians see your vehicle
- Remember that oncoming traffic has the right of way
- Turn the wheels only after the car clears other cars or obstacles, such as hydrants, posts, signs, etc.

##### No Such Thing As A Fender-Bender

The fact is that accidents no matter how minor cost money. The little dent, ding or scratch that years ago was a few hundred dollars to fix can now be several thousand. Vehicles are now constructed of more expensive lighter weight composite materials that can't withstand that less-than-5-mph "bump". Plus, the accident itself is the "tip of the iceberg"; there are all the ancillary and associated costs to handling and settling a claim and fixing the vehicle. Simply put, prevention is a lot less expensive.

##### Help Is Available

LGIT offers the new 8th edition of the National Safety Council's Defensive Driving Class. This class is available to members at \$15 per person. Regional classes are offered at locations across the state throughout the year. This course is proven to reduce property loss and personal injury. There are several informative videos available to members through the LGIT video library.

Information on these classes, the video library and other training opportunities is available on LGIT's web site, [www.lgit.org](http://www.lgit.org) under Training.



Larry Bohlen  
Loss Control Training Coordinator

## Public Works Liability Series

### “Miss”ing Utilities

Spring has arrived and our members will soon begin work on planned construction projects and roadside maintenance. Associated with these activities is an increased risk for damage to underground facilities. Our members average 90 “Miss Utility” related claims each year and damage claims from companies such as Verizon have increased substantially because fiber optic cables are prevalent and costly to repair. One LGIT member recently received a damage claim from Verizon exceeding \$160,000.

Maryland’s Underground Facilities law, more commonly known as the “Miss Utility Law,” was enacted in 1974 to protect underground public service utility lines from damage and to prevent injuries and death. All utility owners are required to participate in the “Miss Utility” one-call notification system and mark utility lines in the area of the proposed excavation. Consequently, all excavation operations must follow the “Miss Utility” requirements. Please take an opportunity to review the following information with your public works employees.

#### Q: What is Miss Utility?

A: Miss Utility is a one-call notification center that notifies underground utility owners of proposed excavation projects.

#### Q: How do I make a locate request?

A: Call Miss Utility at 1-800-257-7777 or use the Miss Utility Internet TIC (ITIC) at [www.missutility.net](http://www.missutility.net). And provide the exact location of the proposed excavation. Your locate request will be assigned a locate ticket number.

#### Q: We are only scraping the road shoulder; do we still need to call Miss Utility?

A: YES. Excavation is defined as follows:

- Grading
- Trenching
- Digging
- Ditching
- Drilling
- Augering
- Tunneling
- Scraping
- Cable or pipe plowing
- Driving a mass of material

Anytime you alter the surface of the ground, it is considered excavation and you must call “Miss Utility” and have them locate the facilities in the proposed excavation area.

#### Q: Our local government has an ordinance which requires all utility lines to be buried at a certain depth. If we are simply scraping the road shoulder do we have to call for a Miss Utility locate?

A: YES. Maryland Courts have held that repeated excavation and erosion could alter the depth of utility lines. Therefore, a locate must be requested anytime the ground will be altered.

#### Q: How soon after I notify “Miss Utility” can we begin to dig?

A: An excavator may begin the excavation or demolition work only after contacting or receiving information from “Miss Utility” confirming that all utility owners have either marked the area or that no underground facilities are located in the vicinity of the reported excavation. “Miss Utility” or a utility owner is required to determine if a proposed excavation is within 5 feet of the horizontal plane of an underground facility within 48 hours (excluding Saturdays, Sundays and legal holidays) after receiving the locate request.

#### Q: How will we know if the underground facilities have been marked?

A: In May of 2001, Maryland enacted the “Miss Utility Ticket Check”

legislation. Any excavator can contact Ticket Check by calling 1 800-821-4226 and a recording will prompt you through steps to retrieve the status of your locate ticket request. If you provide a fax number when you call “Miss Utility”, an automated fax-back detailing the status activity on each locate ticket will be sent to you at 5:00 p.m. two full business days following the original call. Remember, you may not begin the excavation until you have confirmed that the area is either marked or that there are no underground facilities in the vicinity of the excavation. Please visit [www.missutility.net/maryland/ticketcheck.asp](http://www.missutility.net/maryland/ticketcheck.asp) for an overview of the Ticket Check system and a complete list of locator and excavator codes.

#### Q: What if our excavation project is delayed?

A: If you do not begin the excavation project within 10 days of the original call, you must make a repeat call to “Miss Utility” before you begin excavation.

#### Q: What must we do after the proposed excavation site is marked?

A: An excavator is required to exercise due care to avoid interference with or damage to any underground facility that has been marked. If the proposed excavation site is within 18 inches of any utility locator marks, the excavators must “test pit” (hand dig) the area and locate the line prior to using any heavy equipment. The excavation crew must use due care when hand digging the area. Underground cables often become brittle, so be very careful during the digging process.

*Continued on page 5*

#### Q: Does Miss Utility accept locate requests for design and planning purposes?

A: Maryland’s Miss Utility does not accept requests for design and planning purposes. For those requests, you must notify each utility company’s engineering department.

#### Q: What are our responsibilities if we damage an underground facility?

A: An excavator must notify the owner of the underground facility if the excavation activities damage, dislocate or disturb the utility lines. Furthermore, if you fail to comply with the “Miss Utility” law, you will be liable for the total cost of repair of the underground facility.

#### Q: Are there any other penalties associated with damaging underground facilities?

A: Yes, an excavator who damages an underground facility without providing compliance with the requirements of the “Miss Utility” law may be subject to a civil penalty not exceeding \$1000 for the first offense and \$1000 for each subsequent offense or ten times the cost of repairs to the underground facility.

#### Q: What should we do if we strike an underground utility line?

A: Document the event as follows:

- Measure and record the distance from the excavation site to the locate mark
- Measure and record the depth of the line
- Take photographs with a tape measure showing the damaged utility and its relation to the locate marks

#### Q: Do we have to contact “Miss Utility” for mowing operations along our roadways?

A: No. The “Miss Utility” law does not apply to mowing operations. However, weeds and vegetation often obscure utility pedestals, which are placed within county and municipal roadways. These occurrences are always followed by a claim from the utility company demanding compensation to repair the utility pedestal.

#### Q: How can we avoid responsibility for these claims?

A: When a pedestal is struck, document the event as follows:

- Date, time and location of the occurrence
- Name of supervisor and mowing operator
- Record the names and badge numbers of any utility employees who arrive at the site
- Immediately take a photograph of any vegetation obscuring the pedestal



*Sherri Butler  
Director  
Claims Services*

*Wind Perils Continued from page 1*

- Personnel should be trained and assigned to handle emergency operations such as knowing the location of gas, electric and other utility service shut offs, providing watchman service during emergency periods, operating emergency equipment and making temporary repairs. Also, personnel should be able to assist with salvage and cleanup and be qualified to restore protection and resume nominal systems operations.
- Activities should be coordinated with fire and police units.



*Vance Petrella  
Manager, Loss Control*

## Complaint Logs

LGIT has developed a Citizen Complaint Log and a Maintenance Log to document complaints, public works and maintenance issues that arise. Logs are excellent tools for preserving information and to assist in defending claims asserted against our members. Citizen Complaint logs are also a means to create goodwill. Citizens will appreciate the fact that a reliable process is in place to document and respond to their concerns and complaints. This ultimately can reduce the quantity and severity of claims.

Logs can be maintained on a single sheet of paper or in a computer database. Make sure you include key information, i.e., date, location, the nature of the complaint, and name/title of the person making the complaint. How much detail is enough? Clearly, the more detail the better. To find out more about our Preventive Maintenance suggestions and to download the Citizen Complaint Log and Maintenance Log, go to our web site [www.lgit.org/lcu/forms.htm](http://www.lgit.org/lcu/forms.htm)



*Richard Furst,  
Sr. Manager, Loss Control*