

## Spring Training Grant Award

LGIT is pleased to announce that Cecil County is the recipient of the Spring Training Grant in the amount of \$6,240.

This grant award will be used for the development and implementation of a County Safety Model to maintain required training and to encourage all County departments to foster a positive loss control attitude. This Safety Model will encourage supervisors and employees to take an active participatory role in determining the needs for their areas, training programs and claims administration. This Safety Model will help reduce loss exposures through all lines of coverage. Grants awarded in FY 2005 have totaled \$25,315.

Congratulations to all the grant recipients and 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. The training will help to reduce liability and property claims. 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.

Our brochures are now being posted on our website!



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)  
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 and workshops offered near them.

### Regional Defensive Driving Classes (DDC)

August 30-31, 2005 Laurel

### Emergency Vehicle Operations 2 day class (No Pursuit)

August 15-16, 2005 Training Commission Sykesville  
August 28-29, 2005 Training Commission Sykesville

### EVOC 3 day class

September 13-15, 2005 Training Commission Sykesville

### Beginning Supervisors Training: Supervising with Confidence

August 4, 2005 LGIT Office

### Police Liability Issues

September (date to be announced)  
LGIT Office

There will be a PESA Summer Conference July 29, 2005. For more information log onto [www.pesamd.com](http://www.pesamd.com)

Watch for the new "Sewer Backup" videos now available via LGIT's Library.

## 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)

August 22, 2005 Eastern Shore

August 24, 2005 Western Maryland  
August 25, 2005 LGIT

For seminar descriptions, directions and registration forms, visit [www.lgit.org](http://www.lgit.org)

For more information, contact me, Larry Bohlen, Training Coordinator at 800-673-8231 or [lbohlen@lgit.org](mailto:lbohlen@lgit.org)



Larry Bohlen  
Loss Control  
Training Coordinator



### Retirement

Cathy Shelley, Senior Administrative Assistant in our Support Department, has recently retired. We wish her the best in the future. She will be sorely missed!

#### Sponsoring Organizations



## Summer 2005

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.

### Click It or Ticket Buckle Up Your Vehicle Safety Program

It could happen anywhere. During a non-emergency medical transport, a 26 year old emergency medical technician (EMT), rides unsecured to attend a patient. Suddenly, a speeding pick-up truck in the oncoming lane crosses the yellow line and hits the ambulance head on. The cab is crushed. Inside the patient compartment, the EMT is thrown against the front bulkhead and suffers a severe injury.



David J. Deutsch  
Manager, City of Bowie

### We Have A New Board Member

We would like to welcome David J. Deutsch to our Board. Mr. Deutsch has been the City Manager of Bowie since 1993 and prior to that was the Township Manager for Springettsbury Township in Pennsylvania. Currently he is serving on the MML Legislative Committee and has been active in the ICMA Task Force on Community Tools for Ending Racism and served on the ICMA Retirement Corporation's Board of Trustees. He received his BA in Political Science from S.U.N.Y. and his MA in Public Administration from Syracuse University.

### 19th Annual Meeting Turf Valley Hotel November 17, 2005

Our Annual Meeting will be held at the Turf Valley Hotel and Conference Center, Ellicott City, MD, on November 17, 2005.

Registration will start at 10:00 am.  
Meeting will begin at 10:30 am.

LGIT will be holding concurrent workshops which include:

- ♦Basics of Risk Management
- ♦Open Meetings

Invitation and registration will be forthcoming.

### What's Inside

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## Numbers

Like all of our local government members, our year ended June 30 and we had quite a year in FY2005.

While our rate increases averaged about 2% depending on your claims experience, we did have a fairly decent increase on the Property Pool side of the Trust. Some of this was reflective of the losses we had during the past year but some of it was also a suggestion by our consulting actuary to further increase the strength of the pool by building additional reserves. All pools are reporting a surplus, which totals just over \$3 million. The majority of this has been earned in the Primary Liability Pool and is being driven by a large reduction in internal case reserves. Actual results cannot be determined until the actuarial review is completed this summer.

While rate increases are not indicative of good news, there is some good news to offset the increases. Three million dollars of premium credits, authorized by the Board in this fiscal year due to the closing of the Health Pool, are being granted to members of the Primary Liability Pool for FY2005 to FY2007. The credits for FY2005 and FY2006 will be shown on annual invoices being sent for the FY2006 billings. Some members may see very little in the way of increases in fees over the next couple of years. This is just another example of the Trust trying to give back those member dollars when it makes sense to do that.

We continued to place a major emphasis on risk management training programs over the past year. We will continue to do so because this is one of the major things that makes us different from our competition and we have no profit motive. We believe that teaching and practicing sound risk management

practices can help to hold down your liability exposures and claims. We have offered workshops on sexual harassment, sewer backups, police and personnel management. We have offered workshops to help you understand this stuff called insurance. We will finish the year with over 1400 local government officials and employees having experienced our nearly 60 training programs, new record numbers. We are always looking for new training ideas and welcome your comments. The big effect here is the positive impact such training can have on your insurance/legal costs and thus on your budgets and tax rates.

There will be more on all of this in the Annual Report, but in the meantime, have a great summer!!!



Jon Burrell  
Executive Director

## From the Boardroom

### The Board of Trustees met on March 22, 2005 at LGIT and took the following actions:

- ❑ Approved the Underwriting Committee's recommendation of a 6% reduction on boiler renewal rates.
- ❑ Approved the Underwriting Committee's recommendation of a 2% reduction overall in the rates for the Primary Pool.
- ❑ Approved the Underwriting Committee's recommendation that LGIT participate in 10% of the risk in the Excess Pool, in return for a 10% reduction in the premium.
- ❑ Approved the Underwriting Committee's recommendation for an overall rate increase of 13% for FY2006 for the Property Pool.

❑ Approved the Annual Meeting schedule for the Board and the Executive Committee, leaving the standing committees flexibility in determining their schedules.

❑ Approved LGIT's updated Personnel Policy, which includes recent changes in FLSA overtime rules and the addition of the Safe Harbor Rule. Also addressed in the revisions were:

- 1) Cell phone usage;
- 2) Children in the workplace;
- 3) Dress code;
- 4) The definition of internship;
- 5) Personnel files; and
- 6) Enrolling in COBRA.

### The Board of Trustees met on June 2, 2005 at LGIT and took the following action:

❑ Approved the Executive Committee's recommendation to adopt the FY2006 proposed budget, which is less than 5% higher than the current budget.

## LGIT Trustees Election

The following Board members were re-elected by the membership to a new three year term on the Board of Trustees:

Stewart Cumbo  
(Chesapeake Beach)

Roger Fink  
(Charles County)

David Deutsch  
(City of Bowie)

David Deutsch is a newly elected Board member and will serve a three year term.



Sandy Tedrow  
Executive Secretary

## Assumption of Liability

Mrs. Citizen reports a sewer back-up at her home that has caused damage to her basement family room. The town's utility crew responds to the home and clears an unusually large grease blockage from the main. The utility supervisor reports to Mrs. Citizen that the blockage was in the main and tells Mrs. Citizen "we will take care of your damage." Relying upon the town employee's statement to her, Mrs. Citizen does not report the damage to her homeowner's insurer, but waits for the town to assess and pay her substantial damages.

The claim is then reported to LGIT. While investigating the occurrence, LGIT's adjuster learns that the town has records to support that it has routinely jetted the main and that it "videoed" the main 14 months prior to the occurrence. Furthermore, there had been no reports of previous problems or occurrences in this area.

LGIT observes several new businesses not far from Mrs. Citizen's home, including several restaurants. The town has adopted an ordinance requiring restaurants to install and maintain grease traps and it discovers that one of the restaurants did not comply with that ordinance. A video of the main around that restaurant shows the cause of the down-line blockage to Mrs. Citizen's home. The town's records show that it had properly maintained the sewer lines and that it did not have notice of the grease that was introduced into the system by the non-compliant restaurant.

LGIT's Claims Services Department often receives claims for automobile accidents or general liability occurrences only to learn from claimants that our

member employees have admitted to or accepted liability on behalf of our members. Of course, the claims department is always willing to work with our members and consider recommendations and opinions regarding claims. Yet, LGIT's Scope of Coverage specifically states -

*No Member will, except at its own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the Trust's consent.*

As a result, LGIT has a fiduciary obligation to all members of the Trust to thoroughly investigate all claims and, after applying the facts of the occurrence to the principles of Maryland tort law, to only pay damages for claims for which our members are legally liable. A thorough claim investigation may prove that our member had no actual or constructive notice of a defective condition, was simply not negligent, or that the claimant contributed to the occurrence.

LGIT understands that our members and their employees want to promptly address citizen complaints and concerns. That, too, is our objective. However, just as employees may not have authority to go to the store and make purchases on behalf of their employer, they do not have authority to incur or accept a liability obligation on behalf of their employer. All Members should develop internal protocols for handling and reporting claims.



Sherri Butler  
Director of  
Claims Services

## LGIT Congrats!



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

**Washington County** - For developing an Access based COPE data sheet form and database. This proactive approach to data collection has helped enable them to streamline the process of structure documentation and valuation and may be the way all COPE data is collected in the future.

**Cecil County** - For holding two regional Defensive Driving Classes in May with over 65 county employees attending. Great turnout for driver training and helping reduce vehicle losses.

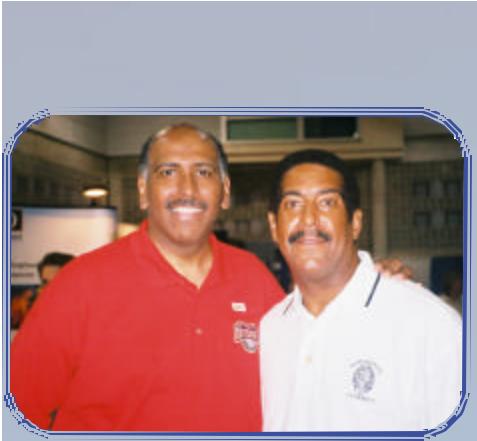
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Hurricane season is here. Therefore, Flood Coverage is one of the most important optional coverages to have. As an example, if a hurricane brings a storm surge that floods your property, you won't be covered unless you have purchased the Flood Coverage.

The best rule is: don't assume anything is covered if it's not stated specifically in your Scope of Coverage. Reviewing the Scope can be an overwhelming task. If there is anything you don't understand, you should ask. Tap into the knowledge and resources provided by LGIT.



Ellen Nudd  
Underwriter



## LGIT Presence at the MML Convention Ocean City, MD June 2005

*Lt. Governor Michael Steele stopped by to chat with Councilman and LGIT Board Member, Stewart Cumbo of Chesapeake Beach.*



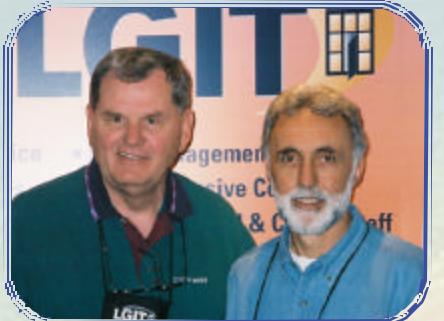
*Mayor Pete Menke, Town of Barnesville, Jon Burrell, and Ron Young, Town Manager of Indian Head and former MML President.*



*Mayor of Salisbury, MML President and LGIT Secretary, Barrie Tilghman, Jon Burrell and Erica Underwood, LGIT Staff.*



*Tom Huse, Erica Underwood and Larry Bohlen were the staff working the LGIT Booth.*



*The Grand Prize Winner of LGIT's Door Prize, Mayor of the City of Bowie Fred Robinson. Congratulations!*

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Sadly, the EMT in the event above died of head and neck injuries en route to an area hospital. The paramedic who was driving unrestrained suffered severe injuries requiring hospitalization.



While this particular accident took place in Kentucky, LGIT members have accumulated a total of 515 claims involving vehicles in FY2005. The types of losses that continue to lead the list each year include backing, rear-end, and intersection collisions. Another frequent loss type that appears to be emerging is U-turns. Also, total incurred losses exceeded \$2.4 million during the past four fiscal years.

### Driving: A Dangerous Occupation

According to the National Safety Council, the leading cause of death among Americans up to 34 years old is motor vehicle crashes. The U.S. Department of Transportation estimates the total societal cost of crashes to be more than \$200 billion per year. The key dangers, according to the Insurance Institute for Highway Safety, include alcohol, speed and lack of seatbelt use.

CIRSA's (Colorado Intergovernmental Risk Sharing Agency) Deputy Director, Chris Krall, agrees, noting that accident prevention requires a comprehensive approach to reducing and preventing vehicle hazards. "It starts at the beginning by hiring good drivers," Krall says. "Check motor vehicle records for positions that require driving. If an applicant has a history of accidents or DUI problems, consider other candidates."

In addition, check motor vehicle records and confirm annually that employees have valid driver's licenses. For all drivers, regular defensive driving training can refresh their knowledge of safe driving techniques.

Drivers of specialty vehicles, such as snowplows or fire trucks, need additional training.

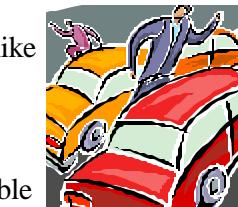
LGIT provides various training opportunities from on-site classroom and field driving classes, such as EVOC (Emergency Vehicle Operations Course). This training is conducted at the MPCTC (Maryland Police and Correctional Training Commission) headquarters in Sykesville, MD. LGIT has a video entitled, "Next Step Coaching - A Driver Safety Refresher" in its library, which can be borrowed at no cost to LGIT Members.

Members are also encouraged to conduct field-driving evaluations, where a supervisor observes employee-driving behaviors.

"Contact Safety" meetings are very useful. Here the driver's supervisor sits down privately with the driver and conducts a "one on one" discussion in order to help identify the causes of the incident.

### Prevent What We Can

There are two things we can control as drivers: the vehicle and ourselves. Not all accidents are preventable. Non-preventable accidents cause a low percentage of LGIT member claims. Some conditions that the driver has no control over include: weather (ice and snow), road conditions (potholes), light (sun), and traffic mix conditions (rush hour). These issues take the blame for claims as well. This is another reason for considering attending defensive driving classes.



We all would like to minimize preventable collisions.

Most preventable collisions are caused by common driving mistakes, such as:

- Following too closely.

- Improper passing/lane changes.
- Backing.
- Not using defensive driving techniques at intersections.
- Driving too fast for conditions.

According to research by the National Highway Transportation Safety Agency, distractions cause as many as 30 percent of all accidents. While some employees, such as public safety workers, must have radio or cell phone communications while driving, instruct them that their first priority is to arrive at their destination safely. If that means pulling off the road to a safe area to complete the call, then they should do so.

As in the example at the beginning of this article, the effects of some accidents are magnified by common problems, such as not wearing seatbelts. Don't forget the basics, such as having and enforcing a seatbelt policy.

Members should observe employees to be sure they're wearing seatbelts as they leave the parking lot, and issue frequent reminders. A review of your entity's Driver Policy should be conducted with employees periodically.

Finally, purchase safer-ranked vehicles for your automotive fleet and inspect vehicles regularly. Follow regular maintenance guidelines to keep employees as safe as possible.

### Establish Accountability

Roads are not areas in which you can completely control employee safety. Accidents will happen and when they do, it's important to find out why, so that you can prevent similar accidents in the future. The final component of vehicle safety is a vehicle accident review system.

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## WHICH GOVERNMENT ACTORS ARE "PUBLIC OFFICIALS" ENTITLED TO ASSERT THE DEFENSE OF QUALIFIED PUBLIC OFFICIAL IMMUNITY?

In a recent opinion, the Court of Appeals revisited the issue of which government actors are "public officials", and, thus, enjoy a qualified immunity in civil actions for their non-malicious acts. In *De La Puente v. County Commissioners of Frederick County*, 386 Md. 505 (2005), the parents of a minor child sued after the child was injured in a sledding accident on Frederick County parkland. The lawsuit alleged negligence on the parts of at least seven individuals employed in various capacities by the Frederick County Department of Parks and Recreation. The defendants included the Director of Parks, the Capital Improvement Administrator, the Recreation Superintendent, the Park Superintendent, and the Safety Inspector. These defendants challenged the lawsuit by asserting the defense of qualified public official immunity. The circuit court agreed with the defendants, finding that they were all "public officials" as opposed to mere government employees, and that they had acted non-maliciously. Accordingly, the defendants could not be held liable for merely negligent performance, or non-performance, of their duties.

On appeal, the Court of Appeals reversed the judgment below, determining that the circuit court had erroneously concluded that the defendants were "public officials". In doing so, the court reviewed the doctrine of common law public official immunity.<sup>1</sup> At common law, a government actor will enjoy

qualified immunity from liability for his or her non-malicious acts where: (1) he is a public official rather than a mere government employee or agent; (2) his tortious conduct occurred while he was performing discretionary, as opposed to ministerial, acts in furtherance of his official duties; (3) he acted non-maliciously.

The initial question, then, is whether a particular individual is a public official for purposes of common law immunity. The guidelines that aid in this analysis have been established by the Court of Appeals. They consist of the following: (1) whether the position was created by law and involves continuing and not occasional duties; (2) whether the holder performs an important public duty; (3) whether the position calls for the exercise of some portion of the sovereign power of the State; and (4) whether the position has a definite term for which a commission is issued and a bond or oath is required. These guidelines are not exclusive, nor do they carry equal weight in the analysis; rather, they are employed using the specific facts and circumstances of each individual's position. Moreover, even if an individual's position does not satisfy the guidelines, that individual may nevertheless be considered a public official if he or she meets one of two additional scenarios: (1) the individual exercises a large portion of the sovereign power of government, or (2) the individual can be called upon to exercise police powers as a conservator of the peace. Under these scenarios, both police and corrections officers are considered to be public officials under Maryland law.

When the court applied the guidelines in the *De La Puente* case, it concluded that the defendants were not public officials. First, the positions in question were not "created by law", meaning that they were not created by Constitutional or legislative enactment, no oath was prescribed, and no

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commission was issued. And, although the defendants performed important public duties, they did not exercise any significant portion of the power of government, meaning that they lacked the power to make and enforce laws. Accordingly, the court concluded that these defendants were not "public officials" for tort immunity purposes, and could not assert a defense of public official immunity.

Just because a government employee is not a "public official" does not mean he or she lacks protection in civil suits. Under the Local Government Tort Claims Act, all local government employees are entitled to a defense in civil actions alleging damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government. Further, and within statutory limits, the local government is liable for any judgment arising from the employee's acts or omissions committed within the scope of employment. The local government's liability, however, may not exceed \$200,000 per individual claim and \$500,000 per total claims arising from the same occurrence. And, although the local government bears no liability for punitive damages, it may, with limited exception, indemnify the employee for a judgment of punitive damages. Finally, if the employee is found to have acted maliciously, the judgment may be executed against the employee, and the local government may seek indemnification for any sums it is required to pay under the Act.

*1. It should be noted that the doctrine of public official immunity has been codified. The immunity available to municipal and county public officials can be found in the Maryland Code Annotated, Courts and Judicial Proceedings Article, § 5-507(b).*

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For employees who are involved in vehicle accidents, have a system in place for investigating, determining preventability, taking corrective action and establishing accountability. Your entity should coach or counsel employees who have performed at-risk driving behaviors, and take disciplinary action for serious or repeated violations of rules and policies.

Together, these steps will help your entity improve vehicle safety and minimize the chance that your employees could become victims of dangerous driving.

### LGIT Can Help!

For further assistance to Members, LGIT provides the following:

- LGIT's Risk Management Manual includes Module 2 — Fleet Management and Appendix A — Use of Local Government Vehicles Program.
- LGIT's Risk Management Manual includes Module 10 — Accident Investigations, which will assist in identifying the "root cause" of an accident.
- LGIT teaches the National Safety Council's Defensive Driving Course on site at LGIT and regionally.
- LGIT's video *Next Step Coaching, A Driver Safety Refresher* includes a Facilitator's Guide and Driver Response Form.
- Contact Larry Bohlen, LGIT's Loss Control Training Coordinator, to schedule a defensive driving class.



John F. Breads, Jr.  
Director of Legal Services



Dick Furst  
Senior Loss Control Manager

## 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 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:

Should a part-time employee be paid at the same hourly rate as a full-time employee if both positions are within the same budget grade?

### Answer:

Yes - absent instruction from the Council or specific mention in the budget, the employees should be paid at the same hourly rate, regardless of whether they are full or part-time employees.

## The 'Are You Covered' Checklist

The renewal process is over and by now you should have received your new Scope of Coverage and revised Property Schedule. This is a good time to give your local Government's Property Scope of Coverage and Property Schedule a thorough review.

Even though premiums have continued to rise, commercial policies have become more restrictive (unlike the LGIT Property Scope). If you have not conducted a thorough coverage and schedule review, you might be seriously underinsured or overinsured. You should go line by line if necessary, so you know what coverages you have or do not have.

Your overall coverage limits are the first thing to check. The annual inflation adjustments to your property coverage may not have kept pace with rising costs for new construction. In addition, the value placed on your properties may not reflect improvements if you did not advise LGIT about them. Ideally you want a policy limit high enough to provide Replacement Cost Value to rebuild your property on the same site, not

including the value of the land. Depending on the age and condition of a particular building you may want it to be valued at the Actual Cash Value basis, which deducts the depreciation of the building based on its age and condition. All vacant buildings are covered on an Actual Cash Value basis.

How about your contents and personal property values? How accurate are these values? It has been noted that some local governments have included the vehicle values to the contents of the building where they are garaged. Since loss or damage to your vehicle is covered under the Business Auto Liability Scope (or under the Property Scope if listed on "Schedule G Off Premises Motor Vehicle Schedule"), these values should not be added to the building contents. In addition to paying close attention to your property coverage limits, close attention should also be given to the optional coverages available, such as: Equipment Breakdown (Boiler & Machinery), Flood, Earth Movement, and Commercial Crime/Public Official Bonds.

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