

# CLAIMS BRIEF



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Summer 2010

## Blizzard of 2010 in Review

By Sherri N. Butler

There's a heat index of 105° outside; this makes the thirty inches of snow that fell in Maryland between February 5<sup>th</sup> and 11<sup>th</sup> a distant faded memory. Yet, LGIT is still resolving snow claims and it is appropriate to take a look at some of the things we learned during this extraordinary snow event.

### **Backing Snow Plows**

Numerous claims involving backing snow plows were reported this year. These occurrences were especially prevalent because plows were attempting to remove very deep snow from the intersections by pushing snow onto non-paved right of ways.



Backing accidents are caused by many factors, including blind spots, poor visibility and driver fatigue and inattentiveness. Unfortunately, the motoring public should, but generally does not, focus attention on avoiding snow plow activities and allowing snow plows to do their job without traffic interference. Each driver must remember that he or she is the one driving the 18-ton dump truck, and §21-1102 of Maryland Vehicle Law specifically states that a driver of a vehicle may not back it unless the movement can be made

safely and without interfering with other traffic. Here are some strategies for snow plow drivers to avoid vehicle backing accidents.

- All snow plow vehicles should be equipped with back-up warning devices and vehicles **MUST NOT** be operated if the device is not operating. Allow the device to sound before you actually move in reverse.

- Place a warning sign on the back of the vehicle warning motorists that the vehicle may back up (see above).
- If a “helper” is riding along, the helper must get out of the vehicle and act as a spotter during backing activities. Believe it or not, several members reported backing incidents where a ride-along “helper” failed to get out of the vehicle and “spot” for the driver.
- Make a mental note of all vehicles around you as you drive. If you see a motorist stop or turn off, then you can cross them off the list. If not, that vehicle is likely hiding in your blind spots. Use curves in the road to help you.
- At night, use reflected light from snow banks or trees as indicators that a vehicle is behind you.
- Look in your mirrors constantly. Lean to see as much in your mirrors as possible.
- Stop and let motorists pass before you begin clearing an intersection. Remember that some motorists may be confused and may not react like you think they should.
- Back very slowly. If you feel an unusual amount of resistance or the back end of the truck rises, stop immediately.
- When purchasing new equipment, consider back-up camera devices.  
If you operate a snowplow or any other heavy equipment during snow storms it is not a matter of *if* a motorist will come too close to you, but *when*.

### **Plowing Side Streets**

Most of the claim occurrences LGIT received following the storm event involved snow plows striking parked vehicles. As members reported these events they specifically advised LGIT’s investigating claims staff that their driver was not negligent but that the claim should be paid because their snow plow had struck a parked vehicle.

LGIT’S obligation to all of our members is to pay only those claims for which our members are legally liable under the principles of Maryland law.



LGIT cannot pay claims simply because a member wants a claim paid. Absent an emergency vehicle response situation, Maryland law specifically holds that local governments are immune from liability for occurrences arising from the operation of a motor vehicle. Simply put, liability follows the driver of the vehicle.

Local government employees and citizens alike automatically assume that when a snow plow strikes a parked vehicle, the local government is responsible for that damage. That is simply not the case. For years, Maryland “courts have held that the mere fact that a vehicle skids or slides on a slippery highway does not of itself constitute evidence of negligence.” Christ v. Wempe, 219 Md. 627 (1959). Courts have commented that “when roads are wet or icy, there are situations in which a driver may lose control of his vehicle regardless of how carefully or reasonably he may be driving.” Lewis v. State Farm Mut. Auto. Ins. Co., 112 Md. App. 311 (1996). Therefore, each and every accident occurrence must be investigated based on the facts of that occurrence and the actions of the driver of the local government vehicle. It is always necessary that we have the opportunity to interview the driver who was involved in the accident. Most of the snow related accidents involved situations where the driver, while attempting to push very deep snow, unavoidably slid into a parked vehicle. The driver did not drive negligently; in fact most of these occurrences were very low speed accidents of less than 10 mph. The majority of these accidents occurred on side streets where homeowner’s vehicles were parked on both sides of the streets leaving large snowplows little room to maneuver and making parked vehicles vulnerable to sliding plows.

Consider some of the following ways that local governments can avoid these occurrences and allow snow plow drivers to perform their duty to open streets and make them safe for travel.

- Consider passing an ordinance that requires homeowners to park completely off-street, if possible, or to park only on even or odd sides of streets when off-street parking is not available. This would allow snow plows clear passage on one side of the street. (See Article 14 of the City of Bowie Code which prohibits the parking of vehicles along city streets after an accumulation of two or more inches of snow). LGIT investigated many accidents which occurred because citizens parked on the right of way even though off-street parking was available.
- Notify residents in newsletters, e-mails and on websites of your municipal regulations or recommendations regarding street parking during snow emergencies. Also advise residents that your local government cannot be responsible for damage to structures and plantings that are placed within the right of way.
- If on-street parking is allowed, notify residents that they should make an effort to clear or flag their vehicles so that plows can see them.
- Notify drivers that they should never plow a street or alley when their view of the right of way is obstructed by leaning vegetation or when the vehicle is too large to safely maneuver the right of way.
- Do not allow other municipal vehicles such as trash trucks to travel side streets until the streets have been cleared and these vehicles can safely maneuver the streets.

LGIT's claims staff has certainly learned that, despite any lack of negligence on the part of their driver, some local government members want LGIT to pay for damages to their citizens' parked vehicles caused by city snow plows. If that is the case, we recommend that you speak with your underwriter about maintaining a **liability deductible**, which will give your local government more autonomy regarding the payment of a claim.

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