The deadline for the Healthy Lifestyle Rewards program is the end of next month. This applies to the three steps described in the color brochure mailed to subscribers in March (and also available at www.vlct.org/d/insuranceandriskservices/2010_HLRbrochure.pdf). All VLCT Health Trust employees who are covered by CIGNA (i.e. “subscribers”) have until August 31 to attend a health screening (or otherwise get the information they need from their doctor) and complete “My Health Assessment” online at www.mycigna.com in order to receive a $50 check. Spouses who are on the plan can do it too, for an additional fifty dollars. We hope each member’s Wellness Coordinator will help subscribers log on to take their health assessment, but if any assistance is needed after following the directions in the brochure, call CIGNA at (800) 854-7312.

But wait, there’s more! Every covered employee who provides satisfactory proof of completing approved weight management and

To Your Health

This issue features the first article in a new column from the League’s Risk Management Services Department called To Your Health. Look under this heading every month for ideas from the Health Trust about reducing the costs of healthcare and health insurance. Plan design, efficient benefit utilization, disease management, consumer-driven health initiatives, and more will be explored and explained. We hope the information here – both theoretical and practical – will help municipalities keep their health insurance budgets in good shape.

(continued on page 14)
HEALTH ASSESSMENT  
(continued from previous page)

exercise programs before August 31 will earn an additional $50. And for each fifty dollars that an employee earns, he or she is entered in the drawing for the Healthy Lifestyle Rewards grand prize trip. A five-minute video outlining the Healthy Lifestyle Rewards and the Leader programs for employers is being provided to the Health Trust Contact and Wellness Coordinator at every Health Trust member municipality. Any selectboard (or other governing body) member who wants to learn how his or her municipality can earn money back by implementing the Leader program should watch it. For information on how to find it online or to request a DVD by mail, please call (800) 649-7915.

If You Make The Effort

Step 1: Have a Health Screening

Learn your current blood pressure, blood sugar, total, HDL, and LDL cholesterol, waist measurement, and other test results. To be tested and receive this data, you can go to your doctor, a VLCT health screening, or any other reputable provider or clinic. Do this no more than 12 months before proceeding to Step 2.

VLCT health screenings are free, confidential and available to all employees, spouses and retirees who are on a VLCT Health Trust plan. To attend a screening in a town near you, refer to the schedule on the Wellness Initiatives page at www.vlct.org and email the contact person for the screening you’d like to attend.

You can sign up with CIGNA for specialized coaching to help you improve your health.

Step 2: Go Online and Complete My Health Assessment

Go to www.mycigna.com

On the home page, click on Have my health & wellness center. You can choose to proceed with this assessment now!

If you have not signed up for the health assessment before, click on register for help.

If you can't remember your ID or password, click on I forgot my…. If you have not signed up for the health assessment before, you can go to your doctor, a VLCT health screening, or any other reputable provider or clinic. Do this no more than 12 months before proceeding to Step 2.

You have access to the health assessment before, enter the user ID and password you created when you registered and click on Go. If you have been on the CIGNA website before, enter the user ID and password you created when you registered and click on Go. If you don’t remember your ID or password, click on I forgot my…. If you have been on the CIGNA website before, enter the user ID and password you created when you registered and click on Go.

On the home page, click on Take my health assessment now! (next to the apple). The new page is a portal to the health assessment.

If you have been on the CIGNA website before, enter the user ID and password you created when you registered and click on Go.

If you have not signed up for the health assessment before, click on register to enroll as a New User of the Health and Wellness Center through the University of Michigan. This is a secure and confidential site.

If you took the health assessment in the past, click on log in. You can choose to proceed with this year’s assessment.

If you have been on the CIGNA website before, enter the user ID and password you created when you registered and click on Go. If you can’t remember your ID or password, click on I forgot my…. If you have been on the CIGNA website before, enter the user ID and password you created when you registered and click on Go.

Other programs of similar duration and verifiability will qualify if they are approved by VLCT’s Senior Health Promotion Consultant, Heidi Joyce. Just finish both programs and submit a completed HLR Proof of Participation form with appropriate documentation before August 31, 2010. The form is available on the Wellness Initiatives page at www.vlct.org.

If you need help completing My Health Assessment, call CIGNA at 1-800-854-7312

Step 3: Work Toward Goals

Participate in structured programs for weight control and physical fitness.

Through your employer, you can use VLCT’s Keep It Off Challenge to help prevent weight gain. VLCT’s Vancouver Winter Olympics Pedometer Challenge will encourage you to stay active through the winter in a friendly competition with your co-workers.

You — and your spouse, if he or she is covered by your insurance — should complete My Health Assessment.
HELPING YOU HELP YOUR COMMUNITY

At TD Bank, our Government Banking Team knows how demanding it is to run local, state, and county municipalities. That’s why we’re focused exclusively on helping communities make the most of taxpayer dollars. With personal, responsive service, our local team will go above and beyond to meet your banking needs.

Call today for an appointment to learn more about our services.

Gene Arnold  Marge Barker  Connie Brennan  Patricia Carlino  John Conte
Nicole Dumais  Wanda Oczechowski  Ted Scontras  Dianne Skerry  Melissa Williams

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**WRITING ADEQUATE FINDINGS OF FACT; BURDEN OF MIRANDA WARNING DECREASES**

**WRITING ADEQUATE FINDINGS OF FACT, CONCLUSIONS AND DECISIONS**

Vermont Environmental Court Judge Thomas Durkin heard an *on the record* appeal of a Vergennes Development Review Board (DRB) decision that ultimately rested on the adequacy of the DRB’s decision. In an *on the record* appeal, the court will determine if a DRB appropriately applied the municipal bylaws and state law to the application in light of the evidence presented at the local proceeding, as well as whether there were any procedural errors by the board. Despite the fact that this case focuses on an *on the record* appeal, and most appeals of municipal land use review decisions go to the Environmental Court de novo, *In re Grist Mill Horse Barn*, Docket No. 205-9-08 Vtec, clearly demonstrates the elements of a decision – it consists of findings of fact, conclusions based on those findings, and the decision. This court case provides an informative lesson for all appropriate municipal panels (AMP) regarding the make up of decisions.

The City of Vergennes’ site plan review standards include provisions for providing adequate parking and “safe pedestrian facilities including connections to the street network.” The applicant proposed to locate a portion of the parking that serves a commercial project at a location 600 feet from the project site on the opposite side of Vermont Route 22A, also known as Main Street. This parking location requires that “a pedestrian must cross Main Street, a crossing that occurs mid-block at the apex of the bridge over Otter Creek,” in order to reach the project site. The DRB denied the application because it determined that the proposal did not provide “safe pedestrian facilities.”

The appellant argued that the record didn’t support the DRB’s findings in the decision; however, Judge Durkin never answered this question. The court’s review of the board’s decision revealed that it “[was] inadequate on its face; it [did] not articulate sufficient factual findings by which [the court could] review whether the evidence supports its legal determination.” The court noted that the decision made findings that a crosswalk did not exist at the apex of the bridge and, therefore, concluded that it was unsafe to cross at this location. It neglected to make findings, based on the evidence presented, that a crosswalk was necessary for a safe crossing or that the existing crossing (without a crosswalk) was unsafe. The court was left wondering how “the DRB determined that a crosswalk [was] a necessary prerequisite to provide for a safe pedestrian connection to the street network.”

An AMP must “fully explain in its decision what evidence it found persuasive and reliable[,]” The evidence that an AMP relies on within a written decision is highlighted as findings of fact. The decision by the Vergennes DRB only mentioned two find-
ings of fact relative to the crossing at the apex of the bridge. Neither provided a basis for concluding the current crossing conditions were unsafe or that increased use of this crossing would warrant installation of a crosswalk to ensure pedestrian safety. The City argued that an engineering study submitted into evidence at the local proceeding indicated that the crossing is currently unsafe for pedestrians. Again, the court wondered “what portions of the ... [r]eport informed the DRB’s conclusion.” It isn’t enough that evidence was supplied during the proceeding to support this conclusion; “persuasive and reliable” evidence must be contained in the findings of fact in order to support the conclusions and decision by the DRB.

For on the record towns, this is important because it shows how inadequate decisions result in unnecessary time delays and additional costs for both the town and applicant. Vacated decisions and remands by the Environmental Court are the remedy. However, this decision is also important for de novo towns because it shows the anatomy of a decision and that it is not enough to have evidence entered into the record. Any evidence relied upon to render the decision must be included as findings of fact. A board then decides whether a proposal complies with the standards in the bylaw based on those findings, which results in the board decision to approve or deny the application. When decisions include all of the proper elements, interested persons may be more likely to understand an AMP’s decision, feel they were treated fairly, and be less likely to appeal, which saves time and money.

For more information about on the record review, please see VLCT’s Resource Library, http://resources.vlct.org/. For a copy of the Environmental Court decision, visit www.vermontjudiciary.org/GTC/Environmental/ENVCRT Opinions/Grist Mill Horse Barn Redevelopment No 205-9-08 Vtec.pdf. (The court discusses more than one illustration of the adequacy of the DRB’s decision; this article only tracks one of these arguments relative to Vergennes’ site plan review.)

Stephanie Smith, AICP, Senior Associate
VLCT Municipal Assistance Center

**ON-SITE WORKSHOPS**
*LET THE VLCT MAC STAFF TRAVEL TO YOU!*

Since 2005, VLCT Municipal Assistance Center staff have been conducting customized on-site workshops in municipal offices across the state.

Each workshop costs $800, except VLCT PACIF members receive a reduced rate of $400. In addition to the program offerings listed below, MAC can, upon request, develop a custom workshop for your specific needs. Please contact Abby Friedman to discuss a possible workshop at (800) 649-7515 or afriedman@vlct.org.

**ON-SITE WORKSHOP PROGRAM OFFERINGS:**
- Improving the Relationship Between Independent Officers and the Selectboard
- Roles and Responsibilities of Town Officers
- Conducting Effective Selectboard Meetings
- Conducting Effective Tax Appeal Grievances and Hearings
- A Field Guide to the Open Meeting Law and Executive Session
- How to Write a Good Hearing Decision
- The Role of the Manager and the Role of the Selectboard
- An Orientation to Local Government for New Selectboard Members
- Leadership and Management Roles of the Selectboard
- Developing and Managing the Town Budget
- Financial Reporting and Management
- Inter-local Agreements
- Municipal Charter Adoption and Amendment

**U.S. SUPREME COURT LESSENS MIRANDA BURDEN**

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to an attorney. If you cannot afford an attorney, one will be appointed to you. Do you understand these rights as they have been read to you?

Few rights are more ubiquitous than *Miranda*. If you’re a fan of TV police dramas, you’re no doubt familiar with the above oft-quoted rights delivered in memorable fashions ranging from the no-nonsense monotone of Sergeant Joe Friday to the hard-edged, irascible barking of Detective Andy Sipowicz. This warning and slight variations of it derive from the case of the same name, *Miranda v. Arizona*. In that case, the United States Supreme Court never actually prescribed the exact wording of the warning that must be given to suspects prior to custodial interrogation, but rather promulgated a set of guidelines to be followed: “He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will...”

(continued on page 19)
Questions asked by VLCT members and answered by the League’s legal and research staff

PLANNING COMMISSION VACANCY; MUNICIPAL PUBLIC ASSEMBLY REGULATION; RED FLAG RULES

What is the Process for Filling a Vacancy on the Planning Commission?

Generally, 24 V.S.A. § 961 governs the handling of vacancies. This statute sets forth the process municipalities must follow to fill positions that have become “vacant” by reason of resignation, death, insanity, or when the town officer no longer remains a resident of the town. The statute states that when one of these qualifying events occurs, “(n)o notice of this vacancy shall be posted by the legislative body in at least two public places in the town, and in and near the town clerk’s office, within 10 days of the creation of the vacancy.” 24 V.S.A. § 961(a).

Not all vacancies, however, are treated the same. Vacancies on planning commissions involve two other statutory provisions. The first pertains to appointed planning commissions. “Members of a planning commission shall be appointed and any vacancy filled by the legislative body of a municipality.” 24 V.S.A. § 4323(a). The second pertains to elected planning commissions. “Vacancies may be filled by appointment of the legislative body only until the next meeting of a municipality, at which time the voters shall elect a commissioner to fill the unexpired term.” 24 V.S.A. § 4323(c)(3).

Neither of these statutes speaks to a requirement to post a vacancy. What exists then is an apparent conflict between one general statute that requires posting of vacancies and two others that do not. When faced with such a dilemma, the Vermont Supreme Court will “apply the long-standing rule of statutory construction that where two statutes deal with the same subject matter, and one is general and the other specific, the more specific statute controls ...” Town of Brattleboro v. Garfield, 180 Vt. 90 (2006). In applying this rule of construction, we find that although there certainly is no legal prohibition in doing so, posting of vacancies is not required under Vermont law for either elected or appointed planning commissions.

A private landowner plans to hold a large festival/event on its property. What can the municipality regulate?

A municipality’s legally adopted local ordinances will indicate what and how a municipality regulates a large assembly. A municipality may adopt ordinances governing noise; commercial events such as “circuses, carnivals and menageries;” public health hazards, open containers, and parking. The enabling legislation is found in 24 V.S.A. § 2291 (as well as other places in statute). A zoning bylaw may also regulate the use of

(continued on next page)
Fireworks are a common harbinger of summer, and Vermont municipalities have the authority to issue permits for fireworks displays. The law requires municipalities – through either the fire and police chiefs or the selectboard when the municipality has no fire department – to issue permits 15 days in advance of the date for a fireworks display. 20 V.S.A. § 3132(d). The permit must confirm that a “competent operator” will oversee the display and that it is located and discharged in manner that is not hazardous to the public or property. The Fire Safety Division of the Vermont Department of Public Safety has sample fireworks display permit and checklists at www.dps.state.vt.us/fire/sparklers.htm.

In addition to a municipality’s authority to regulate according to legally adopted ordinances, the state regulates a “commercial public assembly,” which is defined as “a gathering of two thousand or more individuals in a public place which the general public is permitted or invited to attend, conducted or promoted for profit, whether or not a profit is actually returned, where persons are admitted on payment of cash, entry fees, advance subscriptions, or donations, or any thing of value[.]” 20 V.S.A. § 4501 (5). To obtain a permit, the applicant mails the application for a state permit to the attorney general, the state’s attorney having jurisdiction, and the clerk of the municipality in which the assembly is to be held. The state’s authority, however, does not preempt a municipality’s authority to regulate the same assembly through various ordinances. The permittee in this case would have to comply with all regulations at the state and local level.

For examples of municipal ordinances, please contact the Municipal Assistance Center at (802) 229-9111.

Stephanie Smith, AICP, Senior Associate
VLCT Municipal Assistance Center
Examples of proactive, responsive, local risk management solutions

**SPOTLIGHT ON SAFETY**

**SERIOUS HAZARD ALERT:**
**SAFETY CHAIN SNAPS WHILE SERVICING PLOW FRAME**

A serious safety issue has surfaced that VLCT PACIF would like you to be aware of before any more municipal employees are injured.

Recently a municipal mechanic was servicing a truck and needed to lower the plow frame to work under the hood of the vehicle. As he was lowering the plow frame (also known as a “candy cane frame”), he noticed that one of the safety chains was broken. He quickly moved to try to get it fixed before the second and final chain broke. But while repairing the broken chain, the second chain snapped, causing the 800-pound frame to slam to the floor. The frame brushed the employee, injuring him severely enough that he had to be taken to the hospital by ambulance. The employee survived, but it is clear that there could have been a much worse outcome.

Given the potential for serious or fatal injuries in this case, we urge you to always follow manufacturer recommendations.

(continued on next page)
when performing maintenance on vehicles and attached equipment. If you have questions about the process, call the equipment manufacturer. To help prevent this type of incident, please follow these additional recommendations from the VLCT Loss Control Division:

- Inspect all parts of a plow frame including the chains before working on it. If you notice a defect, mark the vehicle out of service until the problem can be resolved.

- Mark off the area around the frame as a safety zone so that no employees are in danger if something malfunctions.

- Block the frame to support it in case of chain failure. Remember that anytime a weight-bearing support is used, an engineer should be consulted to verify that the support is capable of holding the weight.

- If a weak link or other flaw in the chain is found, keep the equipment out of service until you can replace the entire chain. Do not weld or otherwise try to repair the chain. Such fixes are temporary and inherently risky.

If you have questions, feel free to call your VLCT loss control consultant at (800) 649-7915.

VLCT’s Claims team prides itself on processing claims fairly – but in one respect, we are more than fair to PACIF members. When a claim involves damage to property that is not covered, we will help the member recover the cost of these damages from the responsible party.

Uncovered property falls into two categories: non-covered property (guardrails and fire hydrants), and any property that is not specifically named in the Municipal Property Listing (fencing, streetlights, street signs, traffic and crosswalk control poles, parking meters, custom signs, and statues). When either type of uncovered property is damaged, the municipality can be left with a hefty bill that it doesn’t deserve.

That’s where we come in. In the course of distinguishing covered losses from uncovered ones, our Claims team gains valuable knowledge of the case. Whereas a traditional insurer is profit-minded and has reason not to put additional time into a claim, we want our members to thrive financially, so

Subrogation, or, Claims Team Helps PACIF Members Recover Money From Third Parties

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Spotlight on Safety

(continued from previous page)

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If you have questions, feel free to call your VLCT loss control consultant at (800) 649-7915.

VLCT Loss Control Services Team

PACIF

Since publishing our Loss Control booklet, we have added ...

New Programs
PACIF Grant Program
Serious Hazard Alerts
Injury Review Process (IRP)
Workers’ Comp Rewards Program

New Courses
Driving Simulator: Defensive Driving Practice
National Safety Council Defensive Driving
Police Driving In-Service
Backing Safely for Light Truck Drivers
Trailing for Light Truck Drivers
GOL Chain Saw Safety, Levels 1&2
GOL Chain Saw Safety, Level 3
Drug-Free Workplace Orientation
Preventing Discrimination
Sexual Harassment Prevention
Stress Management
Workplace Diversity
Workplace Violence

sub-ro·ga·tion, noun:
The assumption by a third party (such as a second creditor or an insurance company) of another’s legal right to collect a debt or damages.

(continued on page 13)
Just in time for coverage that begins July 1, 2010, the Health Trust Board voted to offer Delta Dental’s enhanced benefit package at no additional cost to members or their employees. These enhancements are:

- Coverage for up to four routine cleanings and/or periodontal cleanings in a 12-month period. Formerly our program covered only two cleanings per 12-month period.
- Coverage for two fluoride treatments (instead of just one) during a 12-month period for children to age 19.
- Sealant benefits have been extended in two respects: now replacements every three years are paid for children to age 19. The former coverage was for a single application per lifetime for children to age 15.

Studies show that, especially in dental care, an ounce of prevention is worth a pound of cure. These preventive care enhancements will foster better dental health for subscribers, especially children, for years to come.

If you have any questions regarding the VLCT Health Trust’s dental coverage, please call Member Relations at (800) 649-7915.

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**Seeds of Knowledge**

VLCT PACIF invites you to plant some seeds of your own, beginning with e-learning at PACIF Online University.

In this month’s featured course, Back Safety, employees can learn to identify risks and conduct assessments to help reduce injuries at work and at home.

For more information, please visit [www.vlct.org](http://www.vlct.org), and under Insurance and Risk Services select Programs.

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**2010 RMS Calendar**

**Healthy Lifestyle Rewards due date.** Tuesday, August 31. Please see details on page 1.

**Annual “Safety EXPO” of the Vermont Safety and Health Council (VSHC).** Thursday, October 14, Lake Morey Resort, Fairlee. VSHC is a non-profit membership organization dedicated to promoting workplace safety. Details will be posted at [www.vshc.org](http://www.vshc.org) as the date approaches.

**Leader materials due date.** Monday, October 18. VLCT Health Trust members who submit Leader documentation by this date can earn up to four percent of their municipality’s insurance premium at the end of 2010. For more information, visit the Wellness Initiatives page at [www.vlct.org/insuranceriskservices/programs](http://www.vlct.org/insuranceriskservices/programs), or call (800) 649-7915.
CIGNA’S Explanations of Benefits (EOBs) Now Available Online

Health Trust subscribers who have a high deductible or a coinsurance factor in their coverage receive Explanation of Benefits statements by mail from CIGNA. Reviewing these statements is an important part of becoming aware of medical expenses, and EOBs are useful tools in checking the accuracy of medical billing and limiting unnecessary charges.

Last fall, CIGNA introduced an improved format for its EOBs that are carefully laid out to be easy to read and understand. In February, 2010, this EOB received industry recognition for clarity, content and design. DALBAR, a third-party evaluator of health care, awarded the CIGNA HealthCare EOB its “Excellent” designation. Only three of the 36 carriers received this prestigious rating.

As of May 17, 2010, newly generated EOBs, in addition to being mailed to individual subscribers’ home addresses, are being posted online at https://my.cigna.com. Whenever a new EOB is processed, an electronic copy (PDF file) is posted to the subscriber’s MyCIGNA site, so the subscriber can log on (using the username and password set up to take a Health Assessment) to view the EOB. People who haven’t yet registered for access to their personal MyCIGNA.com site now have another reason to do so!

Moreover, starting July 19, 2010, subscribers will have the option to switch to receiving only paperless EOBs, with email alerts similar to the ones that bank customers receive when they receive their bank statements online only. Of course, a subscriber can choose to print the paperless EOB at home, which still saves the use of an envelope and the time and resources involved in standard mail.

To look at a flyer with a general description of CIGNA’s new EOB format, visit www.cigna.com and click on “new EOBs” near the lower right-hand corner. For color prints of the more detailed “Guide to Your Explanation of Benefits” pictured here, please email Susan Benoit at sbenoit@vlct.org and specify the quantity you would like.

Guide to Your Explanation of Benefits

See how your benefits are working for you with this easy-to-understand document that shows you the costs associated with the medical care you’ve received.

When a claim is filed under your CIGNA benefits plan, you get an Explanation of Benefits (EOB). Because we know health care expenses can be confusing, we’ve simplified the language and summarized the most important information about the claim.

CIGNA’s Explanations of Benefits (EOBs) Now Available Online
**July Trivia**

June’s trivia question (mislabeled July due to an administrative error) generated 23 responses – a new World Record! – including one that arrived the good old-fashioned way.

To repeat, a Texan was boasting to a Vermont farmer that he could get in his truck on one side of his ranch, drive all day, and still not reach the other side, to which the Vermont-er responded, “Had a truck like that once myself. Got rid of it.” Twenty-one alert readers knew the first part of the response, but only four – Ida Rainville (St. Johnsbury), Pete Webster (Norwich), Brendan Whittaker (Brunswick) and Bridget Collier (Greensboro) – supplied the whole punch line.

For the past 213 years, this Vermont elected official’s main job has been to keep another elected official from doing his job.

**Who is it and what’s his job?**

Email your answer to dgunn@vlct.org. (A postcard is also welcome, especially one with a picture of haggis.) Then watch this space in the juicy July issue for the answer.

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**Don’t dig yourself into trouble...**

**The Perfect Excavation:**

- Pre-mark the location of intended excavation using white stakes, paint or flags.
- In MA, ME, NH and RI, notify Dig Safe® at least 72 business hours in advance.
- In Vermont, notify Dig Safe® at least 48 business hours in advance.
- Notify non-member facility owners.
- Maintain the marks placed by underground facility owners.
- Use caution and dig by hand when working within 18” of a marked facility.
- If a line is damaged, do not backfill. Notify the affected utility company immediately if the facility, its protective coating, or a tracer wire is damaged.
- Call 911 if the damaged facility poses a risk to public safety.
- Know your state’s excavation requirements. Go to digsafe.com for educational material and current laws.

[1-888-DIG-SAFE](tel:1888DIGSAFE) or [811](tel:811) digsafe.com

Call Dig Safe®. It’s Smart, It’s Free, and It’s the Law.
we use our expertise to their advantage. For the uncovered property, we compile information about both the damage (date, location, photos, and written estimates for cost of repair or replacement) and the responsible party. Then, acting on behalf of our member, we pursue the responsible party or his/her insurance carrier (or both) to recover the appropriate funds for the damages. If we can’t always get full replacement costs for damages, we can at least go toward it, without the municipality having to tie up its own resources in the process.

Great theory, you might be thinking, but how does it work in practice? Here are two examples.

1. Damages recovered from an Insurance Carrier: Two vehicles collided, sending one of them into a light distribution panel that was owned by the municipality but not specifically named in the municipal property listing. Through our investigation, including talking to witnesses and the investigating police departments, we identified the responsible party and its insurance carrier. We filed a claim with the insurer on our member’s behalf and successfully recovered nearly $13,000 for the municipality.

2. Damages recovered from an Individual: While trying to evade police, an intoxicated driver went on a rampage through a cemetery in one of our member municipalities. During the chase, the driver knocked down several feet of cast iron fencing and damaged headstones and the irrigation system. The driver was later apprehended and charged with public intoxication and disorderly conduct. We first tried collecting the damage from the driver’s insurance carrier, but were denied because the damage was a deliberate act. We pursued the matter by assisting our member in completing a Victim’s Impact form to apply for restitution as part of the criminal case, and the court ordered the driver to pay the municipality for the damage to the cemetery. Although the driver couldn’t pay up front, we worked out a payment agreement with him and his probation officer. The driver was to pay $50 every month as part of his probation. If he failed to make timely payments, he faced possible jail time for violating his parole. In the end, the driver made all of the payments, so the municipality was able to restore the cemetery to its original condition without additional trouble to municipal staff or cost to the public.

The VLCT Claims Team
Analysis of recent health insurance data shows that Vermont municipalities offer more generous coverage and pay a larger portion of the cost for their employees than do municipalities across New England and employers nationwide. This article is intended to help municipal managers and governing bodies reevaluate their municipalities’ needs and, if appropriate, redesign their health insurance offerings in time for the 2011 health insurance renewal season. The information will be presented in two parts. (Next month: Implementing Change Successfully.) Both will be available online at www.vlct.org/aboutvict/vlctnews.

In an episode of The Office, Michael Scott, a well-meaning but inept branch manager, is given a single day to choose an inexpensive health insurance plan for his employees. Not wanting to be disliked by people who are used to a “gold” plan, Michael delegates the decision to one of the employees, who zealously creates a package that is so stripped down that it outrages and demoralizes the rest of the staff.

This premise is, of course, absurd because (1) a lead time of months, not days, is typically needed to choose appropriate health insurance, especially for a municipal government; and (2) how the coverage will be paid for should be an integral part of the decision-making process. Forethought and planning will ease the process of finding, developing, and implementing the right health insurance plan. This approach will also lead to a plan that is both fair and financially sound.

Why the Gold Standard is Not Ideal. People who are covered by “gold” or “platinum” type health insurance plans have it made. They have no reason to consider the real cost of the medical services they use because they are completely buffered from costs. Statistically, they are much more likely to use services than are people who have to pay for a larger portion of the medical services they receive (contributing, no doubt, to the fact that up to 30 percent of all healthcare services provided are unnecessary and often even bad for the patient’s health). But employers have to pay up front for those gold and platinum plans, and the costs eventually fall on everyone’s shoulders, whether through more expensive goods and services or higher taxes. Some employers have been quick to limit health insurance coverage in order to cut expenses. Others are concluding that they need to spend their healthcare dollars more effectively, and they want to learn practical ways to manage their health insurance costs while continuing to provide high quality coverage to their employees. The best way to do this is for employers and employees to share the expenses of healthcare in a way that allows employees to be aware of the costs involved – for both care and prescriptions.

2011 Health Insurance: Start Planning Now!

Part 1 — Choosing a Plan and Determining How to Pay for It

A Practical Approach to Balancing Healthcare Costs. Four major steps are involved in an employer’s purposeful process of identifying and choosing appropriate health insurance options to offer to employees: (1) clarify and prioritize the organization’s objectives concerning employee benefits and health insurance; (2) determine a strategy for meeting the most important of those objectives; (3) investigate plan and payment options; and (4) decide on one or more combinations of a health insurance plan...
To Your Health
(continued from previous page)

plan with a payment approach that meet those objectives.

Note that these steps require stages of thought – introspection, judicious deliberation, research, and more deliberation – all of which should not be rushed. Ideally, governing bodies and managers will complete all of these steps and roll out information to employees by the end of October 2010, so employees will have all of November to learn about and assess their options before they enroll (by December 1) for 2011 coverage. Municipalities with collective bargaining agreements might need to lay the groundwork this year for changes to be implemented next year or the year after. (Next month, we’ll explain the steps involved in rolling out your plans, steps that rely primarily on communication, education, and creative action.)

Clarify and Prioritize Goals. Municipal managers should meet with their governing bodies first to determine what is most important to the organization, then to decide what goals they want to achieve with their employee benefits. (Which goals will lead to the outcome that the municipality seeks?) The particular situations faced by the municipality will have to be considered. For instance, do budget restraints require immediate cost savings? Ideally, the municipality will consider whether it wants to:

- address its short-term or long-term needs,
- encourage low or high awareness of health care costs,
- stabilize employer costs,
- improve the overall package of employee benefits,
- provide a funding vehicle for retirees’ medical costs,
- give employees an opportunity to accrue wealth,
- provide employees with tax-effective savings vehicles, and
- Promote a healthier workforce (attract and/or reward healthier workers).

These are only a few examples. The municipality might consider other goals, and it should understand the range of possible outcomes before deciding. The table at the end of this article shows appropriate plan types for achieving each of several health insurance goals.

Outline a Strategy to Meet the Goals. When the municipality has determined its goals, it needs to outline a “benefits mix” strategy that is aligned with achieving those goals. A benefits mix is a combination of the plans offered and the payment structure assigned to each plan – i.e. what the employer pays and what the employees pay. Whatever the mix, if expenses are to be sustained beyond the coming year, the benefits provided should be balanced with their cost. One major decision is whether the municipality will provide a specific level of health benefit or a stated dollar amount toward a health benefit. The outline acknowledges the general direction that the municipality will take, and the benefits mix strategy will become the road map for accomplishing the municipality's health insurance goals.

The next step is to roll up your sleeves and get down to the business of learning and weighing the various plan and payment options in order to decide the exact mix of benefits to offer.

Learn Plan Types and Payment Approaches. The VLCT Health Trust offers 18 different plans with a range of coverage options. In general, some plans are more desirable for frequent health care users and others are better for infrequent users. Certain plans are much better than others at engaging employees to help control current and future costs, but this effectiveness can be unintentionally undermined by well-meaning employers. If the municipality plans to change its former approach in order to save taxpayer money, it needs to consider future health insurance costs and look carefully at the likely extended consequences of the current year’s choices.

In order of importance, the four elements of health insurance pricing are premiums, deductibles, coinsurance, and copays. Relatively new health insurance funding vehicles include federally defined Health Savings Accounts (HSAs) and Health Reimbursement Arrangements (HRAs). The choices that the employer makes in setting up employee benefits affect whether the employer or employees pay the major parts of the expenses. For example, moving to a high deductible plan shifts medical costs to the employee.
costs to employees, unless the employer softens (undermines) the impact (effect) by either contributing to an HRA or HSA to offset some of the deductible amount, or reducing the employee premium contribution. Many other subtle details can also adjust the effect that a plan has on short-term and long-term costs.

**Decide on a Mix of Plans and Payment Approaches.** In determining the correct benefit mix, it is best for the municipality to seek benefit neutrality by comparing apples to apples. Benefit neutrality is maintaining the same value of the health plan across different designs. For example, with the VLCT HP 10/20 plan, employees can expect to pay an average of about six percent of their medical costs through deductibles and co-pays. In an HDHP HSA 1500 plan, employees can expect to pay an average of about 16 percent of their medical costs. To make these plans benefit neutral for the employee, the employer would have to contribute to the HRA account or the employees’ HSAs to make up this difference. In this instance, benefit neutrality could also be achieved by adjusting the sharing of premium costs between employer and employee. Benefit neutrality should be considered from the employer’s perspective as well – although some employees might find themselves paying more and others less, if the overall effect is neutral for the employer, so be it. The municipality shouldn’t put its finances at risk just to avoid disappointing anyone.

A municipality that finds itself saving a lot of money (such as by switching from an HP or Gold plan to a high deductible plan) even after establishing benefit neutrality for its employees might be inclined to enrich the employees’ benefits somehow, but it should also consider whether the extra money might rightfully be retained in a public coffers – that is, think beyond the current year. If switching to a lower-cost plan, do not make it no-cost to employees. When comparing plans, put them on the same actuarial footing by comparing benefits, not just current costs. Start by assuming that savings should be captured for the entity. From that point, the municipality can consider appropriate uses of some of the saved money, such as incentives for employees who make health-enhancing lifestyle choices.

Below are examples of two very different benefit packages. The first encourages employees to use medical services and prescriptions with little or no awareness of the true costs involved. The second is set up so that the amount employees pay will be generally aligned with the costs of the medical services and prescriptions that they use. These examples are illustrative rather than likely. Many municipalities will seek a middle ground. And, as with many civic endeavors, the devil is in the details. VLCT’s Member Relations representatives are well versed in explaining the ins and outs of the various health insurance funding options, so please don’t hesitate to call your rep as soon as your questions start taking shape.

David Sichel, Deputy Director
Risk Management Services
Help Wanted

Administrative Assistant. The Town of Stowe seeks a full-time, team-oriented professional for a comprehensive community recreation program. He or she will provide hands-on support of selected recreation programs and report directly to the Parks and Recreation Director. Responsibilities include daily administrative functions, including program and facility registrations, scheduling, cash handling, billing, record keeping, reporting, communications, ordering, marketing, maintenance of files, office equipment, computer network, website, and general housekeeping. Requirements: Excellent initiative, communication and organizational skills, computer expertise and the focus required to multitask in a busy environment; working knowledge of RecTrac, MS Office Suite, Adobe Creative Design Suite, Windows XP and iContact; recreation background helpful; Associate’s degree and three years experience. (Applicable experience may be substituted for education.) Beginning salary, $14.56-$16.69/hour, dependent on qualifications and experience; excellent benefits. A copy of the position description is at www.townofstowevt.org. To apply, send letter of interest and a current resume to Susanne Gann, HR Coordinator, Town of Stowe, PO Box 730, Stowe, VT 05672, or email recruit@townofstowevt.mont.org. E.O.E. (6-11)

Water Supply System Operator. Webster-ville Fire District No. 3 is seeking a Class 4 operator for a small water supply system. Familiarity with the Water Supply Rule is necessary. Approximately 10-20 hours week are needed for oversight as the actual testing schedule is currently done by a Class 2 operator. To apply, please send letter of intent and salary requirements by July 28, 2010 to Georgette Coleman, Chair, WFD # 3 Prudential Committee, PO Box 155, Webster-ville, VT 05678, or call 802-522-8083. (6-10)

Planning Administrator. The Town of St. Albans, Vt. is seeking a part-time (20-hour/week) Town Planning Administrator. The Administrator performs technical, administrative, and regulatory work related to the town’ planning process. The successful applicant will have excellent research, analytic, and communication skills, a positive attitude, and the ability to work as part of a team. For a complete job description, please go to www.stalb-anstown.com and click on Employment Opportunities, or contact Jennifer Gray at adminast@comcast.net or (802) 527-8346. To apply, please email a cover letter and resume by Wednesday, June 30, 2010 to Christine Murphy, Town Manager at satownmanager@comcast.net. The Town of St. Albans is an equal opportunity employer. (6-2)

Town Manager. Newburgh, a small community (pop. 1,500) in central Maine, seeks a town manager with strong management and communication skills and an emphasis in municipal finance. The manager also serves as treasurer/tax collector and general assistance officer. Newburgh has a Selectmen/Town Manager/Town Meeting form of government, a three-member Board, three full-time employees, several part-time employees, and a municipal budget of $1.2 million. Requirements: Public Administration degree and 5 years of current experience or equivalent combination of experience/education. Salary negotiable DOQ/E. To apply, email a resume and cover letter with salary requirements by June 29 to HumanResource@memun.org. You may also fax it to (207) 624-0118, or send it via surface mail to Director of Personnel Services, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. EOE. (6-1)

For Sale

Vehicle and Equipment. The Town of Berlin, Vt. has the following the equipment for sale: 2005 International 7600, 10-wheel truck, with 14’ side dump, sander, 10’ reversible plow, and 11’ wing [2,080 hours, 49,423 miles]; 2000 Cat 924GZ loader, with 2-3 yard bucket [6,320 hours]; 2002 JD 310SG 4x4 backhoe, including sloping bucket, digging bucket, spare and rear tire and rim [2,890 hours]. The Town will accept bids on these items until 1 p.m. on July 15, 2010. Submit bid in a clearly labeled

(continued on next page)
**ASK THE LEAGUE**
*(continued from page 7)*

**Federal Trade Commission delays enforcement again (and again and again and again and again).**

On May 28, 2010, the Federal Trade Commission (FTC) announced that it will for the fifth time delay enforcement of the “Red Flags Rule.”

The Red Flags Rule is part of the federal Fair and Accurate Credit Transactions (FACT) Act of 2003, under which creditors with covered accounts must develop and implement identity theft prevention programs to identify, detect, and respond to potential indicators (“red flags”) of identity theft. The FTC previously confirmed that the Red Flags Rule applies to all municipal utilities and other operations, such as municipal housing authorities, that extend credit as part of a continuing relationship for services.

Affected municipalities now have until **December 31, 2010** to develop and implement a theft identity prevention program. This delay, however, is a little different in that if Congress passes legislation to limit the scope of the Red Flags Rule with an effective date earlier than December 31, 2010 enforcement will begin as of that date. To read the FTC’s latest press release, go online to [http://www.ftc.gov/opa/2010/05/redflags.shtm](http://www.ftc.gov/opa/2010/05/redflags.shtm). The FTC has developed a template for entities that have a low risk of identity theft, and that is available at [www.ftc.gov/redflagstrule](http://www.ftc.gov/redflagstrule).

The VLCT Model Identity Theft Prevention Policy and the VLCT Identity Theft Prevention Memo of April 14 are also available online. For more information, contact Garrett Baxter, VLCT Staff Attorney, at 1-800-649-7915 or gbaxter@vlct.org.

Garrett Baxter, Staff Attorney
VLCT Municipal Assistance Center

**CLASSIFIEDS**
*(continued from previous page)*

sealed envelope to Berlin Town Administrator, Municipal Office Building, 108 Shed Road, Berlin, VT 05602. Faxed or emailed bids will not be accepted. The Town reserves the right to accept or reject any and all bids. For questions regarding the bid procedure, please contact the Town Administrator at (802) 223-4405. For questions regarding specifications, contact the Road Superintendent at (802) 223-7337. (6-3)

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We still encourage all subscribers, especially single-use readers, to consider switching from paper copies to online viewing of the **VLCT News**. The benefits are many: a smaller carbon footprint, lower printing and postage costs, less paper used, full-color rendering of color photographs, and immediate access to web links.

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If you are ready to switch to accessing the **VLCT News** completely online, please email us so we can remove you from our postal mailing list and make sure that your correct email address is on our **News** email list.

To view the current **VLCT News** or the archives, please go to [www.vlct.org/aboutvlct/vlctnews/](http://www.vlct.org/aboutvlct/vlctnews/).
be appointed for him prior to any questioning if he so desires.” *Miranda v. Arizona*, 384 U.S. 436, at 479 (1966). These procedural safeguards against self-incrimination, which find their origins in the Fifth and Fourteenth Amendments to the U.S. Constitution, must be provided by the police to criminal suspects before initiating custodial interrogations. The Miranda Court placed a “heavy burden ... on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retain or appointed counsel.”

In a 5-4 case that Justice Sotomayor, writing her first major dissent since her appointment to the high court, characterized as turning “Miranda upside down,” the United States Supreme Court recently held that an accused must now unambiguously invoke his right to remain silent. Moreover, the Court held that so long as a Miranda warning is provided and understood by the accused an uncoerced statement can constitute an implied waiver of one’s right to remain silent. *Berghuis v. Thompkins*, No. 08-1470.

The case involved the killing of one man and the injuring of another outside a mall in Southfield, Michigan. The suspect in the shootings, Van Chester Thompkins, fled and was apprehended a year later in Ohio. Two Southfield police officers traveled to Ohio to interrogate Thompkins and arrange for his transfer back to Michigan. Before questioning began, Southfield Detective Helgert gave Thompkins a form explaining his Miranda rights. Thompkins was asked to read a part of the form out loud to demonstrate he could read, after which Detective Helgert read the rest of it to him. Thompkins was also asked to sign the form to acknowledge he understood his rights, which he refused to do. The officers then began interrogating Thompkins, a process that, in spite of Thompkins’s nonresponsiveness, took nearly three hours. “To the extent Thompkins gave any response, his answers consisted of a word or two. A ‘yeah,’ or a ‘no,’ or ‘I don’t know.’ ... And sometimes ... he simply sat down ... with [his] head in [his] hands looking down.” Near the end of the interrogation, Detective Helgert asked Thompkins “Do you pray to God to forgive you for shooting that boy down?” Thompkins replied, “Yes.” Thompkins was charged with first-degree murder, assault with intent to commit murder, and firearms related offenses. Despite his attempt to suppress his statements, the jury found Thompkins guilty on all counts and was sentenced to life in prison without parole.

There were three main questions before the Court related to the admissibility of Thompkins’s statements. The first was whether Thompkins invoked his right to remain silent by not saying anything for an extended period of time. The Court answered this question by drawing an analogy to an accused’s right to counsel. Refusing to adopt a different standard to determine whether an accused has invoked the right to counsel and the right to remain silent, the Court reasoned that just as with the right to counsel, the right to remain silent must be invoked unambiguously. Such a standard the Court held will “avoid difficulties of proof and … provide guidance to officers on how to proceed in the face of ambiguity.” Since Thompkins did not say that he wanted to remain silent or that he did not want to talk, he did not invoke such a right.

The second question before the Court was whether Thompkins waived his right to remain silent. Under *Miranda*, inculpatory statements are inadmissible at trial unless it can be shown that the accused “in fact knowingly and voluntarily waived [Miranda] rights” at the time the statement was made. Despite *Miranda’s* heavy burden to demonstrate that the defendant “knowingly and intelligently” waived his privilege against self-incrimination and right to counsel, the Court held that such a showing of a waiver of Miranda rights does not have to be express. Consistent with the “main purpose” of *Miranda* to ensure that the accused is advised of and understands his rights, a waiver may be implied by an uncoerced statement. Here, Thompkins’s “Yes” reply to Detective Helgert’s question of whether he prayed to God for forgiveness for shooting the victim established a “course of conduct indicating waiver.”

The last question before the Court was whether the police were allowed to question Thompkins without first obtaining a waiver of his right to remain silent. The Court held that obtaining a waiver was unnecessary, as Thompkins’s words and actions themselves inferred waiver. The primary protection afforded suspects is the Miranda warning. “[A] suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to police.”

Though the unassailable logic of Justice Sotomayor’s critique that “[c]riminal suspects must now unambiguously invoke their right to remain silent — which counterintuitively, requires them to speak” may be hard to ignore, law enforcement in Vermont will likely find the Court’s ruling in *Thompkins* to be easier to adhere to when interrogating criminal suspects.

Justice Kennedy, writing for the majority, summarized the Court’s new perspective on Miranda rights as follows: “The *Miranda* rule and its requirements are met if a suspect receives adequate Miranda warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admission... (A)fter giving a Miranda warning, police may interrogate a suspect who has neither invoked nor waived his or her Miranda rights... If the right to counsel or the right to remain silent is invoked at any point during questioning, further interrogation must cease... (A) suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to the police.”
Saved by VLCT, VLCT PACIF, VLCT Health and Unemployment Insurance Trusts. Information will be posted on our website as it becomes available. The complete attendee registration packet will be sent in early August. We look forward to seeing you at Town Fair 2010!

Planning and Zoning Forum. Thursday, October 28, Capitol Plaza Hotel, Montpelier. Sponsored by the VLCT Municipal Assistance Center.

VLCT Health Trust Annual Meeting. Friday, November 12, Capitol Plaza Hotel, Montpelier. Sponsored by the VLCT Health Trust. Members and directors of the VLCT Health Trust will gather to hear annual financial and performance reports as well as information about renewal of the health insurance program.

Visit our website www.vlct.org/events/calendar/upcomingevents/ for the most up to date list of events.

For more information about the following workshops or events, please contact Jessica Hill, Manager, VLCT Administrative Services, tel. (800) 649-7915, or email jhill@vlct.org. Or visit www.vlct.org’s Events Calendar and select a workshop for more information or to register online. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

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