

## LESSONS LEARNED FROM LOSSES OCTOBER 2011



### SUBROGATION

In one claim presented, an employee sustained a serious ankle fracture due to a building collapse. Investigation revealed that the collapsed building was under or near construction at the time of the collapse. This construction may have caused or contributed to the injury sustained by the employee. While we are working to identify the cause of the collapse, we will also place the general contractor on notice of our intent to pursue subrogation in connection with this claim. If the employee employs a third-party attorney, we will advise the employee and the attorney that there will be a lien on whatever proceeds the employee may be awarded in the third-party action against the contractor. Under the state law that governs workers' compensation claims, an employer has the right to pursue reimbursement in a third-party action against the negligent party, to the extent that the third-party recovery is less than or equal to the compensation payments. Typically, the municipality is entitled to two-thirds (2/3) of the money paid in Workers' Compensation benefits, less a small amount for attorney's fee.

In an effort to effectively pursue subrogation, it is important to properly identify possible contractors, manufacturers, installers, suppliers, designers, subcontractors, etc. We recommend that each municipality retain purchasing records, invoices, manufacturer's recommendations, specifications, instructions, change orders, etc. so that this identification can be made promptly and responsible parties placed on notice. It is also very important to retain all contracts, Certificates of Insurance & Hold Harmless agreements, so that the insuring party can also be placed directly on notice of our lien rights. All documents should have consistent language throughout any additions, deletions or changes.

Certificate of Insurance Guidelines and Recommended Indemnification Language documents are found on the Atlantic County Municipal Joint Insurance Fund website ([acmjif.org](http://acmjif.org)) under the Coverage tab.

For all years, we have been able to collect **\$6,222,935.03** in total subrogation, reimbursements and salvage. For the policy period 1/01/10 through 12/31/10, through the efforts of the fund solicitor's and our office, we were able to collect **\$605,974.51** and to date, over **\$674,250.00** (already an 11% increase over 2010!). These totals highlight the results that can be achieved with proper contract language, sound document retention policies, strong investigations and a focused, aggressive subrogation effort.

*SCIBAL ASSOCIATES BY: ALICE LIHOU*