

## LESSONS LEARNED FROM LOSSES SEPTEMBER 2011

### **CLAIMS ARE AVOIDABLE**

In many cases this year, Atlantic JIF towns realized positive results largely due to having an active property inspection and documentation program. Given the severity of some of the claims made against JIF members, including head injuries and fractured shoulders, knees and hips, this program together with the JIF's strong defense of Title 59, has saved our members substantially in terms of claim costs, potential for runaway jury verdicts and the possibility of additional claims for the same loss location.

These excellent results reinforce the value of inspection and documentation programs. When our towns maintain an active inspection program, we are able to defend claims and avoid exposure to all members. A strong inspection program is supported by documentation of those inspections.

Due to the frequency of trip and fall type claims, municipal defenses under Title 59 as to "constructive" versus "actual" notice are tested often. Typically the plaintiff's position is that if a "defective" condition is present on municipal property, the municipality should have been aware of the defect. As we find in many of the claims presented, often our only defense is the lack of prior notice of a defective condition as defined by Title 59. Failure on claimant's part to prove prior notice can bar the claim.

We recommend that all towns develop a strong "inspection with documentation" program, solidifying the defenses available under Title 59. Of course, once aware of a correctable defective condition, we recommend immediate repair, to avoid having to settle or defend this type of claim.

The potential for wide-scale damage by Hurricane Irene is a reminder that just like evacuations, boarding up windows and other risk-reducing activities, an inspection and documentation program helps reduce serious municipal exposures *all year round*.

