

**Atlantic County Municipal JIF
LESSONS FROM LOSSES
April 2011**

MEL POL/EPL CORNER

Each quarter, the MEL provides a report of all claims resolved via trial, settlement or dismissal by the Court in that quarter.

In the fourth quarter of 2010, the MEL resolved 36 claims on behalf of 13 joint insurance funds. The MEL paid a total of **\$4,111,921.00** in total payments. For all of 2010, the MEL paid a total of **\$17,511,229.00** on behalf of all JIFs.

On behalf of the Atlantic JIF, four claims were resolved in the fourth quarter. Settlements amounted to **\$222,500.00**. With additional legal and expense, the MEL paid a total of **\$327,425.00**.

In an employment claim filed against Folsom, the municipal clerk alleged that she was discriminated against due to her disability and that the borough failed to accommodate her disability. Simultaneously to this claim, the borough was seeking to remove her from her tenured clerk position. Total legal paid on this case to defend was **\$22,000.00**. The case ultimately settled for **\$190,000.00**.

In an employment claim filed against Egg Harbor Township, a female police officer alleged that she was wrongfully terminated based upon gender and pregnancy. The township accepted a resignation from the claimant upon finding a medical condition that was not previously disclosed as well as alleging providing false information as to another injury that occurred while she was in training at the police academy. Up to settlement, total paid to date to defend the case amounted to **\$35,000.00**. The case ultimately settled for **\$25,000.00**.

In a claim filed against Estell Manor, the state-appointed CFO alleged racial discrimination, harassment and defamation. Apparently a comment was made in session that indicated there were potential financial discrepancies. Ultimately, the alleged discrepancies were discovered to be an accounting practice application by the former CFO. The case ultimately settled for **\$7,500.00**. Total legal paid was **\$5,800.00**.

Finally, in a claim filed against North Wildwood, a plaintiff alleged that the City had failed to enforce regulations as to the plaintiff's neighboring property. The plaintiff alleged that said property was not in compliance with zoning regulations.

Ultimately, a Motion for Summary Judgment was ruled in favor of the City. The case was dismissed in its entirety. Total legal paid was **\$38,700.00**.

For your records, we include the Scibal MEL staffs' e-mail addresses and telephone extensions below:

	Direct Fax #	Telephone Ext.	E-Mail Address
Kathy Tyler-Schohl	609-601-3177	2041	ktschohl@sciadvantage.com
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WATCH YOUR LANGUAGE!

Scibal's Property Supervisor Chris Roselli reports that he is seeing language in municipal contracts where the municipality is actually **waiving** its right to pursue subrogation.

Failure to identify and remove this language is very serious and significantly diminishes Scibal's ability to pursue third parties (contractors, installers, suppliers, etc.) ***even when they are at fault*** for employee and third-party injuries and property damage losses. We typically see this in construction contracts.

Any language that waives or impacts a municipality's right to pursue subrogation should be deleted from all contracts and related documents (Change Orders, Addendums, Agreements, Purchase Orders, etc.). Likewise, protective language, such as Indemnification, Hold Harmless and Duty to Defend provisions should always be ***included*** in contracts.

Vendors and other third-parties conducting municipal business should always carry full insurance coverage including workers' compensation and general liability coverage. Contractors and vendors should hold the municipality harmless from liability due to their actions and provide a defense to the municipality should the municipality be sued due to the vendor or contractor's actions or work product. **Proof of such insurance should always be obtained.**

In a recent claim filed against a public entity client, a landscape contractor had a day laborer removing tree stumps. While putting the machine back on the trailer, the machine was engaged, and the laborer was essentially eviscerated. In this

instance, the public entity did obtain a Certificate of Insurance. Unfortunately, the Certificate provided by the General Contractor did not provide proof of Workers' Compensation insurance. The employee has now filed a claim against the public entity, demanding workers' compensation coverage. While this case will be defended, there have been case decisions resulting in entities being held liable to provide workers' compensation benefits to non-employees due to the creation of a "special" employer relationship. This claimant has been in a coma since March 22, 2011.

Fortunately, under the "Coverage" tab, The Atlantic JIF website <http://acmjif.org> has excellent resources titled:

**"RECOMMENDED INDEMNIFICATION, HOLD HARMLESS AND
DEFEND LANGUAGE AND CONTRACTOR'S LIABILITY
INSURANCE LANGUAGE"**

And

"CERTIFICATES OF INSURANCE GUIDELINES"

Thank you!

SCIBAL ASSOCIATES INC. CONFIDENTIAL BY ALICE LIHOU