

**ATLANTIC JIF
LESSONS LEARNED FROM LOSSES
MAY 2011**

TITLE 59 AND SUBROGATION

Subrogation is the “substitution of one person in the place of another with reference to a lawful claim, demand, or right, so that the one who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities”.

Title 59 or the Tort Claims Act governs claims filed against municipalities. The Act states in section 59:9-2e, that “No insurer or other person shall be entitled to bring an action under a subrogation provision in an insurance contract against a public entity or public employee”. To the extent that a third party action against a public entity or a public employee represents a subrogation claim, it is barred. However, if it represents an uninsured excess and/or deductible, it is not barred.

When a municipality is at fault in an automobile accident with a third party, the potential claimant’s personal automobile collision insurance availability must be disclosed and utilized to pay for the claimant’s collision damage. If applicable, the claimant can collect the deductible from the municipality, as this amount is not an insured interest. Title 59 also states that “If a claimant receives or is entitled to receive benefits for the injuries allegedly incurred from a policy or policies of insurance or any other source other than a joint tortfeasor, such benefits shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award against a public entity or public employee recovered by such claimant; provided, however, that nothing in this provision shall be construed to limit the rights of a beneficiary under a life insurance policy”.

Where payment is made on behalf of the municipality for damages or where an employee has been injured by a third-party, an attempt is made to subrogate against the culpable party. Contracts and Certificates of Insurance are reviewed to identify whether the other party has agreed to indemnify the municipality. Property ownership is identified and homeowners are placed on notice of the intent to subrogate. Background checks are initiated to identify assets, income or other means of satisfying the subrogation action, including court-ordered restitution. Due to the legal costs involved in pursuing a subrogation action, the decision not to pursue a subrogation action is usually based upon investigation which indicates that the other party is not employed, own property, or has any other attachable assets.

On behalf of the Atlantic JIF, Scibal and the fund attorney has successfully obtained **\$5,978,912.75** in subrogation, salvage and reimbursement receipts for all years. In 2011, over **\$430,236.23** subrogation and salvage reimbursements were posted on behalf of the Atlantic JIF.