

<p>Burlington County Municipal JIF LESSONS FROM LOSSES April 2011</p>
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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. Settlements amounted to \$2,299,512.00. For all of 2010, the MEL paid a total of **\$17,511,229.00** on behalf of all JIFs.

The MEL did not resolve any Burlco JIF claims in this quarter. Of note, most of the significant claim settlements involved employment practice liability claims alleging hostile work environment, sexual harassment, failure to accommodate, retaliation, age discrimination and disability discrimination.

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

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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 found responsible 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 Burlco JIF website <http://burlcojif.org> has excellent online resources to help members avoid this problem:

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

And

"CERTIFICATES OF INSURANCE GUIDELINES"

Thank you!