



## SUBROGATION BEST PRACTICES

When a Joint Insurance Fund (JIF) is required, under the Municipality's policy, to pay a Property Damage or Workers' Compensation claim, the JIF has the right to pursue subrogation against the third party who was responsible for causing or contributing to the injury or damage. Subrogation allows the JIF Fund to recover certain claim costs from an at-fault third party, including any deductible paid by the Municipality.

JIF Solicitors undertake these efforts to recover these claim payments through legal action and through asserting the JIF's lien against any recovery by an employee against the responsible third party.

In first-party property claims, the Subrogation Attorney will seek all damages, including the deductible. In Workers' Compensation claims, the Subrogation Attorney will seek to recover the amount paid for medical treatment, lost wages, and the value of a permanent partial disability (PPD) award.

Any amount recovered from the responsible third party reduces the amount paid on that claim and your municipality's overall claims payments, which ultimately reduces your insurance costs.

Your investigation of and assistance with these matters can be an integral part of the level of success when the JIF pursues subrogation.<sup>1</sup>

Police agencies are in a unique situation, and their assistance can play an important role in gathering information on incidents in which they conduct investigations. Body-worn cameras and motor vehicle recorders (MVR) record the incident, and these videos can be used to gather additional evidence on the conditions of the situation at the time of the incident. The recordings of the conditions regarding the incident are very important because when the conditions are recorded at a later date, there will likely be allegations made that the conditions changed since the incident and/or that the recordings do not accurately depict the conditions at the time of the incident. When officers respond to incidents where injuries have occurred, such as slips, trips, falls, cracked sidewalks, boardwalks, roadway conditions, etc., documenting the conditions that are observed is required in order to provide a defense or to assert liability. Also, with property damage claims (Police Vehicles), preserving any and all video evidence is essential to the pursuit of subrogation.

Municipalities that have camera systems (Body-Worn, MVR, and Security Cameras) in place should also review and cross-reference incidents and preserve these recordings, as they will assist in pursuing subrogation recoveries.

The Safety Director's Office encourages Municipalities and our law enforcement partners to earmark and store these recordings beyond their destruction date. If they are destroyed prior to the case being adjudicated, the Municipality and the JIF may be accused of "spoliation of evidence," which is the purposeful destruction of evidence to hide information that would have been beneficial to the plaintiff's case.

Please consult with your municipal attorney and develop policies and procedures to assist our fund attorneys with the recovery of subrogation monies in workers' compensation and property damage claims.

If you have any questions, please contact your Law Enforcement Risk Control Consultant.

<sup>1</sup> Qual-Lynx, Lessons Learned From Losses, "Subrogation." April 2024 Newsletter.