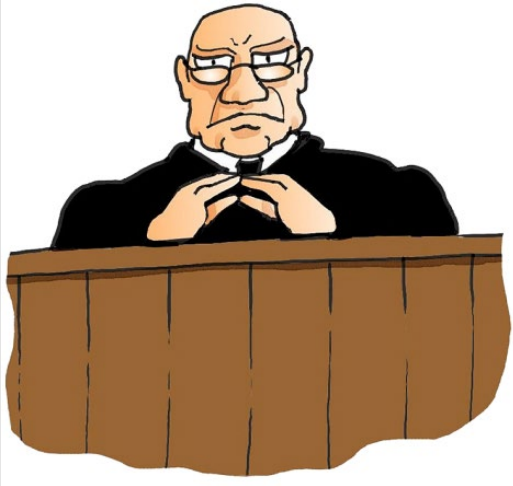


LITIGATION MANAGEMENT PHILOSOPHY

TRICOJIF RETREAT

JULY 26, 2023



FUND SOLICITOR

David S. DeWeese, Esquire

THE DEWEESE LAW FIRM, P.C.

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609-522-5599



The Joint Insurance Fund (JIF) concept has been very successful throughout the State of New Jersey, and the operation of these Funds has resulted in tremendous monetary savings to the member municipalities and ultimately, to their taxpayers.

The TRICOJIF's executive handling and management of the claims on behalf of its member municipalities has produced outstanding results.

OUR LITIGATION PHILOSOPHY

The TRICOJIF has adopted a very aggressive litigation philosophy which has been effective in discouraging and reducing claims. Early in the litigation process, the Fund Solicitor and Assigned Defense Counsel identify the cases in which the member municipality has strong liability defenses, and in those instances, the Fund aggressively defends those cases.

The serving of frivolous litigation notices and the early filing of Motions to Dismiss and Summary Judgment Motions at the completion of Discovery are the strategies utilized to obtain the dismissal of these cases. The concept of settling a case for the cost of litigation is rarely an option.

Our litigation philosophy and our goal is not only to successfully defend a particular case, but to send a message to the potential Plaintiffs and the Plaintiffs' attorneys that settlement monies will not be paid on cases where there are strong defenses available to the member municipality. This litigation philosophy has been very effective in discouraging the filing of claims against our member municipalities.

SETTLING CASES

In those cases where the Fund Solicitor and Assigned Defense Counsel identify a case where the member municipality has liability issues, we will endeavor to attempt to settle the case or expeditiously proceed to mediation to attempt to resolve the case for a reasonable settlement amount without incurring substantial legal expenses defending the claim.



ASSIGNED DEFENSE COUNSEL

Our professionals each play a very important role our Litigation Management and Philosophy; however, the Assigned Defense Counsel occupies the trenches, and the Fund relies upon them for their ultimate successes in litigating the claims.

In 2021, the TRICOJIF advertised a Request for Qualifications (RFQ) for our General Liability and Workers' Compensation defense panels, and the responses received from Law Firms were overwhelming. The Defense panel that was selected by the TRICOJIF are the best Defense Law Firms and Attorneys in South Jersey. Contracts were awarded for 2022 and 2023, and 2024 will be the last Contract under the RFQ issued in 2021.



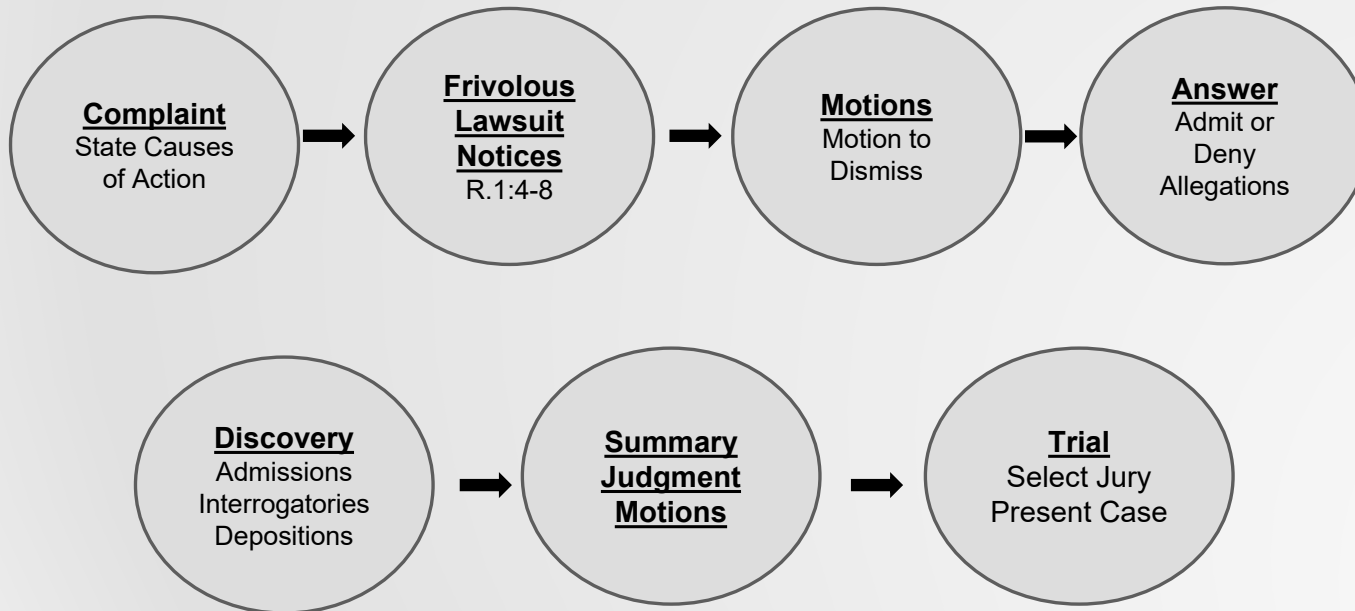
TEAMWORK



The Fund Professionals engage in daily communication regarding the day to day handling of claims. The Fund Solicitor conducts annual meetings with Assigned Defense Counsel and Approved Associates, and annual meetings with the Supervisors and Adjusters from the Claims Administrator's staff to discuss current trends and issues and to improve the performance of the Fund Professionals in the handling of claims. In addition to the daily communications and these meetings, the TRICOJIF has adopted Litigation Management Guidelines which have proven to be an invaluable tool to insure the efficient, effective and consistent management of our claims. I am in the process of reviewing and revising those Litigation Management Guidelines.

The Fund Professionals have and will continue to work together as a team in the aggressive, effective and efficient management of litigated matters on behalf of the member municipalities and their employees and elected officials.

LITIGATION PROCESS



Why do we settle cases?

1. Liability Issues/Evidence Issues
2. Poor Documentation
3. Lack of Training
4. Poor Witness Testimony
5. Fee Shifting
6. Injury Significance
7. Risk of Large Verdict
8. Uncertainty of Jury Verdicts



RISKS OF TRIAL:

There are many risks involved when a matter is taken to Trial. Some of these include the following:

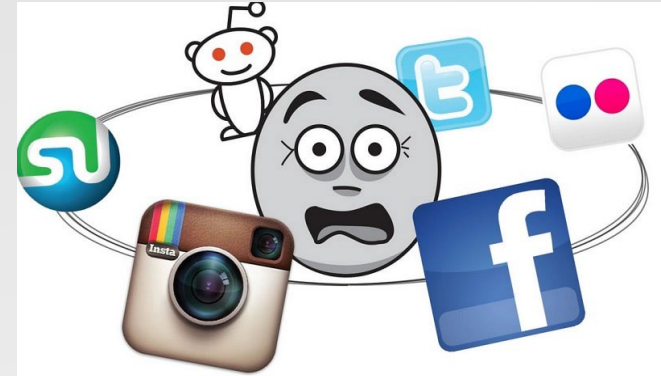
- 1) It is unpredictable to leave the decision to the discretion of six (6) individuals who have no legal training, experience or expertise, and whose opinions have been and are highly influenced by the media and social media.
- 2) Many of these cases are fee shifting. If there is an adverse verdict, the Plaintiff's attorney will recover his/her counsel fees in addition to the damages (no matter how insignificant the damages recovery). Plaintiff's counsel fee applications in these cases can range from \$250,000.00 to \$500,000.00.



Risks of Trial cont.:

- 3) There is always the risk of a jury awarding punitive damages which must be personally paid by the individual public official or public employee.
- 4) Preparing for and participating in a Trial is an extremely emotional and physically draining experience.





CURRENT JURY CLIMATE:

- Social media has changed the mentality of our perspective jurors. Every incident involving police officers is replayed over and over again on social media, and it seems that the reporting and comments regarding an incident are very distorted. In addition, there is a general anti-government mentality. These reports have led many individuals to form opinions that are anti-police and/or anti-government, and the respect that the general public once had for Officers and the uniform and public officials and employees, has been eroded.
- Based upon these factors, there is a strong likelihood that your jury pool will consist of many individuals who have an anti-police sentiment and/or anti-government sentiment that will cause these individuals to view their actions negatively. In addition, these individuals can influence the other jurors in the jury pool during jury selection and deliberations.
- For these reasons, there is a significant risk when deciding to take these matters to Trial.



Example 1:

The Garden Club of a City sponsored a flower sale, and the sale was at the City-owned firehouse, with permission of the City. They displayed many flower pots and other containers of flowers. Due to the sunny weather, they drew a big crowd and made a substantial profit.

Unfortunately, one (1) visitor tripped over a flower pot and sustained a fractured hip. As a result, she required surgery, many months of physical therapy and ultimately a hip replacement.

The injured individual filed a lawsuit against the City for maintaining a dangerous condition.

What was the result?

Answer:

Unfortunately, the City did not require the Garden Club to sign an Indemnification Agreement or to provide an Insurance Certificate which named the City as an “Additional Insured”.

There was no Use of Facilities Agreement in place and no Tulip coverage.

As a result, the City was held liable for the injury as it occurred on City-owned property.

The case settled for \$260,000.00.

EXAMPLE 2: TRIP & FALL

A Town permitted a local nonprofit group to use land owned by the Town for a craft show. Prior to the event, the Town's Public Works Department trimmed some shrubs and bushes in the area. During the craft show, a woman tripped and fell over a piece of a shrub that was concealed but extended above the ground by eight (8) to ten (10) inches. She was severely injured and she sued the Town.

Was the Town liable?



ANSWER:

The group was not required to provide any insurance or to name the Town as an additional insured. Also, the group did not sign a Use of Facilities Agreement with the recommended indemnification language.

The case ultimately settled for the payment to the Plaintiff of \$70,000.00 and the Fund spent over \$15,000.00 in attorney's fees and costs. The Town had no insurance coverage or indemnification clause to rely upon, therefore, they were forced to settle the case.



EXAMPLE 3:

- A Town's Public Works Supervisor rented an articulated dump truck from an equipment rental company. The term of the rental was for one month and the Public Works Supervisor signed a Standard Form Rental Agreement which contained many terms and conditions which were not beneficial to the Town.
- The fine print in the Rental Agreement relieved the Equipment Rental Company of all liability, required the Town to indemnify and hold the Company harmless and also obligated the Town to maintain insurance coverage for the rented dump truck. After renting the dump truck, the Town contacted the Rental Company because of vibration issues that they were experiencing with the dump truck and the Rental Company performed repairs. After completing the repairs, the Rental Company tested the dump truck and determined that it was functioning properly.



EXAMPLE 3 CONT.:

- Upon the delivery of the dump truck to the Town, it was tested by the Town's employee and the Rental Company representative and they determined that it was operating properly.
- The next day, while the dump truck was being operated by the Town's employee, the dump truck caught fire and the cab and engine compartment became fully engulfed in flames. The Town's employee was required to jump from the dump truck to escape the fire and the employee suffered significant injuries. The employee sued the Equipment Rental Company and the case was ultimately settled for a payment of \$700,000.00 to the employee. (A large portion of our Workers' Compensation Lien was satisfied from the proceeds of the Settlement).
- Thereafter, the Rental Company filed a Complaint against the Town seeking to recover the \$700,000.00 settlement that was paid based upon the terms of the Rental Agreement which required the Town to identify and hold harmless the Rental Company pursuant to the Rental Agreement, and to name the Equipment Rental Company as an "additional insured" on their policy of insurance.

What was the result?

ANSWER:

Based upon the terms of the Rental Agreement, specifically, the failure to name the Rental Company as an “Additional Insured” under the Town’s policy of insurance and the indemnification and hold harmless agreement contained in the Rental Agreement, the Town settled the claim by reimbursing the Rental Company \$275,000.00 of the \$700,000.00 settlement.

Why?

**What should the Town have done to
protect themselves?**



EXAMPLE 4:

TRIP & FALL

- A Town was the owner of an historic structure (“Mansion”) that was over 300 years old. The Plaintiff, a volunteer, was working at a fund raising event at the Mansion in October of 2017 when she tripped and fell over a 6”x 6’ beam that was temporarily located on the floor inside the Mansion, which was used to support the structure of the ceiling. The beam had yellow caution tape and orange duct tape on the edges of the wood. The Plaintiff alleged that the lighting in the room was poor (candlelit only).
- Approximately 3 years prior to the incident, a non-profit organization had been formed to raise money for the renovation and/or restoration of the Mansion, and this fund raising event was spearheaded, organized and supervised by that non-profit organization. The non-profit organization occupied the Mansion pursuant to a Lease Agreement with the Town (2015, 2 year lease), and in the Lease Agreement, the Town retained ownership, oversight, maintenance and repair of the Mansion.
- The non-profit organization was given the right to use the Mansion and the surrounding property for events. The non-profit organization was solely responsible for occupying, staffing and supervising all fundraising events and they retained the services of 2 contractors and an architect to perform work on the mansion. The Lease Agreement expired 7 months prior to the Plaintiff’s trip and fall; however, the parties continued to operate as if the Lease Agreement was still in effect.



EXAMPLE 4 CONT.:

- Despite the terms of the Lease Agreement, the reality was that the Town maintained only the exterior of the building and cut the grass. The non-profit entity handled all event operations and all interior renovations and restoration of the Mansion.
- The Plaintiff suffered a ruptured ear drum requiring surgery, hearing loss, vertigo, tinnitus, concussion, fractured cheek bone and a right shoulder injury.

Who is liable?



ANSWER:

Prior to Trial, three of the Defendants, the 2 contractors and the non-profit organization, settled with the Plaintiff for a total of \$85,000.00 (Contractor 1 - \$55,000.00; Contractor 2 - \$20,000.00; Non-Profit - \$10,000.00). On the eve of Trial, the Town contributed \$75,000.00 toward the settlement.

Why?

What should the Town have done differently?



TRICOJIF LITIGATION STATISTICS

(As of December 31, 2022)



GENERAL LIABILITY, AUTOMOBILE LIABILITY AND POLICE CIVIL RIGHTS CASES:

- Gloucester, Salem, Cumberland Counties Municipal Joint Insurance Fund (TRICOJIF):
Total Active Litigation Files: 42
(Police Civil Rights Cases: 13)



2022 OUTCOMES
OF GENERAL LIABILITY,
AUTOMOBILE LIABILITY AND
POLICE CIVIL RIGHTS CASES:

- **Total Cases Closed: 28**

* 15 of the 28 closed cases were closed with no monetary payment to the Plaintiffs (Summary Judgment Motions, Motions to Dismiss and Stipulations of Dismissal) which equates to 54% of the cases closed with no payment.



EMPLOYMENT PRACTICES LIABILITY AND PUBLIC OFFICIALS LIABILITY CLAIMS (EPL/POL)

In 2011, the Fund shifted from having the MEL handle and defend the EPL/POL claims to purchasing an insurance policy for those coverages through an insurance carrier. This shift led to more involvement and better Claims Management by the Fund Solicitor, as well as Member Municipalities. EPL/POL Committees were formed and claims, claim trends and claim loss ratios are received and reviewed by the Committees on a quarterly basis.

These efforts have led to reduction in the number of EPL/POL claims, and a reduction in the Loss Ratios for each Fund.

What is the carrier's Litigation Management Philosophy?

The establishment of the MEL EPL Helpline has been a very valuable resource and has led to the avoidance of many potential EPL claims.



RESOURCES

- **Fund Solicitor**

David S. DeWeese, Esquire
The DeWeese Law Firm, P.C.
609-522-5599
david@deweese-lawfirm.com

- **Claims Administrator's Office**


Qual-Lynx

- 1.) Chris Roselli: Account Manager
crocelli@qual-lynx.com
- 2.) Dominic Spaventa: GL Supervisor
dominic.spaventa@qual-lynx.com
- 3.) Tammy Langsdorf: WC Supervisor
tlangsdorf@qual-lynx.com

- **EPL / POL Hotline**

See attached Information Sheet





Questions about employment issues? Call the New MEL Employment Practices Helpline

The MEL Safety Institute is pleased to announce the establishment of a NEW MEL Employment Practices Helpline (EPL), a dedicated resource to guide members on employment related issues.

The MEL EPL Helpline is staffed by attorneys that specialize in New Jersey employment law and understand the MEL JIF system. The three law firms staffing the EPL Helpline are affiliated with local Joint Insurance Funds (JIFs).

Who can use the EPL Helpline? MEL member municipalities will select and approve two individuals to use the helpline.

What hours is the EPL Helpline available? The helpline will be staffed during normal business hours, 9 a.m. – 5 p.m. Voicemail can be left afterhours for a callback.

What kinds of issues can be addressed? Any employment related topics or policies and procedures related to issues such as:

- Hiring
- Termination
- Harassment
- Discrimination
- Promotion/Demotion
- And more...

What are the MEL EPL Helpline numbers? MEL members can choose to call any of the MEL EPL Helpline firms listed below.

MEL EPL HELPLINE:
732-583-7474

Jodi Howlett
Cleary Giacobbe Alfieri Jacobs LLC
955 State Route 34, Suite 200
Matawan, NJ 07747955

MEL EPL HELPLINE:
609-522-5599

David S. DeWeese
The DeWeese Law Firm
3200 Pacific Avenue
Wildwood, New Jersey 08260

MEL EPL HELPLINE:
973-334-1900

Fred Semrau
Dorsey & Semrau
714 Main Street
Boonton, NJ 07005

What happens after the call? The attorney will provide the member with transcript of the call that includes recommendations. If the issue is beyond the scope of the MEL EPL Helpline the attorney will provide direction to the member on where to get appropriate assistance. All calls are confidential.



SUBROGATION

Subrogation means one person or party is entitled to make a demand in the place of another. Subrogation issues surface when a person has been injured and someone other than the person or party at fault pays for all or some of the damages resulting from the injury.

For illustration purposes, when an employee is injured at work, often some person other than the employer bears some responsibility for causing the employee's injury. For Workers' Compensation purposes, that individual or entity is known as the liable third party.



While the presence of a third party may not change the fact that Workers' Compensation will pay benefits to the employee for the employee's work-related losses, subrogation allows the Workers' Compensation provider to either step into the employee's place or participate with the employee in a lawsuit against the liable third party.

The effect of subrogation is that the employee is only paid once for those amounts associated with medical expenses and wage loss that the employer has paid under Workers' Compensation. Any portion of an award in a lawsuit that includes amounts for losses paid by Workers' Compensation is refunded to the employer asserting the subrogation claim, less the expenses of litigation and the employee's attorney's fees (one-third of the recovery).

SUCCESS!
Subrogation Collections

2013 - 2022

TRICOJIF:

- Total Collected = \$2,830,055.52
- Average per year = \$283,055.55
- Total collected for the first 5 months of 2023 = \$265,927.91



INTERLOCAL SERVICE AGREEMENTS



**(with County or
other Municipalities)**

CHECKLIST

- 1.) The duties and responsibilities of each entity involved must be clearly delineated in the Agreement.
- 2.) All insurance coverage issues must be clearly delineated.
- 3.) Each entity should be responsible for the negligent acts and conduct of their own employees only.
- 4.) All Interlocal Service Agreements should be reviewed by your Municipal Solicitor.
- 5.) All Interlocal Service Agreements should be provided to the Executive Director and Fund Solicitor for review, prior to execution.
- 6.) Who is executing these Agreements?
How is execution being authorized?

EXAMPLE:

Town A entered into an Interlocal Agreement with Town B which permitted a water system to flow (via pipe) through Town A to Town B.

Town B had agreed to maintain the area around the manhole cover and the piping. An inspection apparently took place; unfortunately, the manhole cover was not replaced and the area around the manhole cover was significantly raised due to poor workmanship by a third-party contractor.

A vehicle with several passengers struck the “berm”, and because of the missing cover (and the high rate of speed which was argued), the car flipped over. The driver and the passengers were severely injured.



What was the result?

ANSWER:

Ultimately settlements of over \$300,000.00 were paid out on behalf of Town A, Town B and the contractor, one-third (1/3) each.

The Interlocal Agreement did not specify who was responsible for inspections, maintenance and the correction and reporting of problems. The Agreement also lacked clear language that indemnified Town A. Since Town A had a police department that routinely patrolled the area, they lost any Title 59 immunities available regarding prior notice of a dangerous condition.

In the end, they did not own the piping, or manhole and did not create or maintain the area around the manhole; however, they ended up having to pay for one-third (1/3) of the claim simply because the Interlocal Agreement failed to protect the Town.



PROFESSIONAL SERVICES CONTRACTS

(Solicitors, Engineers,
Planners, Auditors, etc.)



1.) These individuals and/or their companies are not covered under the TRICOJIF General Liability Policy unless they are an employee of the municipality, and if they are an employee, this employment must be reported to the Executive Director.

2.) Professional Liability (Malpractice)

Coverage Limits:

- \$1,000,000.00 per incident and in the annual Aggregate
(Minimum Coverage)
- General and Automobile Liability Coverage Limits
\$1,000,000.00/\$2,000,000.00
- Workers' Compensation Coverage Limits - Statutory

3.) Indemnification, Hold Harmless and Defend Language in the Professional Contracts

- Contracts should also contain an acknowledgment that the Professional is not covered under the TRICOJIF policy



4) Cyber Liability Insurance Coverage:

A minimum limit of liability coverage of One Million (\$1,000,000.00) dollars is recommended for third party liability arising out of breach of privacy, inclusive of confidential and proprietary business information, HIPAA violations and other breaches of personally identifiable information and/or protected health information, that may arise from their work under their Contract.

(The Cyber Liability Coverage may be included within their Professional Liability coverage. If so, the limit of such combined coverage shall be at least \$3,000,000.)