



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES—THEY DID EVERYTHING RIGHT UNTIL THEY DIDN'T

"The only mistake in life is the lesson not learned." —Albert Einstein

DESCRIPTION

A public entity hired a contractor to complete an upgrade on dam gate technology. The city wisely secured a contractor with adequate insurance limits and was named an additional insured for the project. A heavy downpour caused flooding, and although alarms were triggered, the gates failed to open automatically as per the terms of service. Several properties in the surrounding zone sustained water damage as a result of the uncontrolled overflow.

In the urgent response to public turmoil, an authorized individual made a public announcement through the local news media. In the address to the community, the speaker apologized for the event, accepted liability, solicited claims, and pledged to reimburse all affected property owners for damage incurred.

THE RESULT

Property owners independently hired contractors, completed repairs, and submitted property damage and business interruption claims to the City for reimbursement. Estimates were paid on face value and then submitted to the excess carrier for reimbursement beyond the retention.

THE PROBLEM

The municipality put various financial recovery facilities in jeopardy.

- Risk Transfer: Risk transfer to the contractor working on the upgrade was not immediately explored. The contract had favorable indemnification and defense.
- Damage Estimation: Damages were paid without investigation into competitive bids or the duty to mitigate. The entity risked incurring costs beyond the terms of the policy or legal obligations.
- Reporting: The excess carrier was placed on notice four months after the incident and after payments had commenced. Late notice may have prejudiced the excess carrier's ability to invoke certain provisions of the policy, including the right to engage in the investigation and defense, putting coverage at risk.

LESSONS LEARNED

- Ensure all contracts have adequate limits for the risk, a favorable indemnification clause, and the public entity is named as an additional insured on the policy.
- Develop a crisis communication plan in advance of an incident. As part of the plan, review insurance policies for crisis communication coverage.
- Place all related parties on notice of loss immediately. Include internal stakeholders, contractors, and carriers.



- Coordinate an appropriate response with stakeholders prior to making announcements.
- Complete a thorough investigation of the cause of loss and liability. Utilize appropriate experts as warranted.
- Review property damage estimates and invoices for reasonable reimbursement. Pay damages for which there is a legal obligation to pay.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for purposes of illustration and education.

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