



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: CONTRACTS AND INDEMNITY

The only mistake in life is the lesson not learned.

—Albert Einstein

DESCRIPTION

A city endeavored to undergo renovations on a publicly owned building. An employee that worked for the masonry contractor fell through a hole on the third floor and plummeted to the basement of the building. The employee filed a workers' compensation claim and pursued civil action against the city as the building owner, and they sued other contractors for their alleged negligence in the failure to properly cover and secure the hole.

The claimant suffered fractures to the pelvis, sacrum, and spine and ultimately suffered a spinal cord injury. Several surgeries were necessary, and an infection developed during the claimant's hospitalization. The claimant lost the use of one leg. The workers' compensation medical costs exceeded \$400,000. In addition to the medical expenses incurred, the claimant sought damages for future medical expenses, future wage loss, emotional distress, and pain and suffering.

The allegations against the city were that it had failed to provide a safe workplace and violated the state labor laws. The city asserted a defense that the employee was under the direction and control of the mason contractor and that they had not been negligent. The terms of the contract with the masonry contractor mandated that the city be considered an additional insured and that the policy provide \$1 million per accident, with \$3 million general aggregate limits. The terms of the masonry contract indemnified and held the city harmless from any injuries to their employees or others resulting from their work. The city tendered the claim to the contractor for indemnity and defense, and the insurance carrier accepted the tender.

THE RESULT

The negotiated settlement from all parties totaled \$11 million. The city's portion of the settlement was \$2 million, and \$9 million was allocated to other contractors working on the site.

THE PROBLEM

Although the city had a viable contract with appropriate indemnity provisions and additional insured status, its limits were inadequate. The contractor exhausted the \$1 million per occurrence limit on behalf of the city as an additional insured, and the city paid an additional \$1 million out of pocket to resolve their portion of the claim.

LESSONS LEARNED

Contracts for high hazard services require increased limits of insurance above the traditional \$1 million per occurrence/ \$3 million aggregate limits to adequately insulate entities from financial loss for the following reasons. Injury claims arising from road design, construction, arborists, and transportation providers are more likely to be



severe in nature. Additionally, inflation related costs associated with medical expenses, legal defense, and potential verdicts increase settlement values. Finally, per occurrence and aggregate limits on general liability policies typically do not multiply with the number of insureds; therefore, it is recommended that contract terms mandate higher minimum limits of insurance to account for the potential exposure of multiple parties.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education. This information is not intended as legal advice; please consult an attorney.

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