



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: CROSSWALK: CITY OR COUNTY?

The only mistake in life is the lesson not learned.

—Albert Einstein

DESCRIPTION

A downtown commuter stepped off the train on a rainy autumn evening and proceeded onto the crosswalk. While crossing the street, the pedestrian was struck by an oncoming vehicle. The claimant suffered catastrophic but not fatal injuries that will require lifetime home health care. The pursued claims are against the driver of the vehicle, the city, and the county.

The allegations against the driver were negligence, failure to yield to a pedestrian, and inattention. The driver had an active automobile insurance policy with a \$100,000 per-person limit.

Notwithstanding the plaintiff's own neglect to look for oncoming traffic, the inclement weather conditions, and the driver's failure to exercise caution, the plaintiff's lawsuit also named the city and the county as defendants. The theories of negligence against them included inadequate lighting, poor location of the crosswalk (between diagonal parking spaces, which blocked the view of pedestrians and oncoming traffic), and failure to conform to the national Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

The city installed the original crosswalk 19 years prior to the accident. The city contended that the crosswalk was on a street under the jurisdiction of the county and that the city had no duty to erect or maintain the crosswalk but did so because of the danger to commuters crossing the street without one. The city also maintained that the county reinstalled the crosswalk months prior to the incident; if there was a lack of compliance with standards, the county had the opportunity to correct them at that time. The relevant records reflected that one other pedestrian accident at the crosswalk had occurred six months prior to this accident, but that no other related incidents had occurred in the past 20 years.

No contract or ordinance defining responsibilities existed between the city and the county. One expert opined that it was the county's responsibility to install the crosswalk and the city's responsibility to maintain it. At the time of reinstallation, the county engineers recommended to relocate the crosswalk and make other changes to comply with MUTCD standards. The county disregarded the recommendations.

THE RESULT

The driver's insurance carrier tendered the policy limit of \$100,000; an amount inadequate to cover the plaintiff's damages. The city and the county remained adamant that solely the driver and pedestrian were responsible for the accident. Furthermore, each pointed to the other as the party responsible for the crosswalk. The city and the county each filed motions for summary judgment, which were denied. Medical bills exceeded \$1.5 million and were ongoing. The case settled for an undisclosed amount; the city and the county equally split the settlement.



THE PROBLEM

The city and the county each operated independently and failed to communicate with each other in the placement of the crosswalk and reinstallation efforts. Without a contract or agreement for responsibility in place when the accident occurred and suit was subsequently filed, neither entity was adequately equipped to defend the allegations. This situation left both parties to incur defense costs and a lengthy discovery process. The conflict of interest negated the ability of the two entities to engage in a joint defense strategy.

LESSONS LEARNED

Prior to initiating construction of a crosswalk, it is recommended that the installer communicate the intent and objective with all relevant parties—in this case, the city and the county. Discussions regarding the crosswalk may include the objective; traffic analysis; location; and responsible party for design, compliance with signage and various standards, construction, and maintenance. Additionally, community engagement may benefit to ensure the project meets the needs of commuters, local businesses, and other affected users. Finally, multiple parties may be involved in various stages of design, construction, and maintenance, including contractors, business owners, and multiple public entities. Therefore, it is important to commemorate the roles and responsibilities of all parties in a contract, including indemnification with adequate limits of insurance to protect the interests of each organization.

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.

Allied Public Risk is dedicated to insuring public entities. Please contact anyone on our Alternative Markets Team regarding your public entity accounts.

Margaret Zechlin, Executive Vice President
E: mzechlin@alliedpublicrisk.com
O: 415.761.8628
M: 415.497.6400

Alie Basch, Senior Vice President
E: abasch@alliedpublicrisk.com
O/M: 413.335.3092

Laura Mehrtens, Regional Underwriting Director
E: lmehrtens@alliedpublicrisk.com
O/M: 636.212.5072

LaTonya James, Senior Underwriting Analyst
E: ljames@alliedpublicrisk.com
O/M: 773.750.5233

Mia Legg, Senior Underwriting Analyst
E: mlegg@alliedpublicrisk.com
O/M: 773.750.5233



Melissa Metzger, Senior Underwriting Analyst

E: mmetzger@alliedpublicrisk.com

O: 618.717.0553

Trish Poe, Claims and Risk Management Leader

E: ppoe@alliedpublicrisk.com

O: 909.614.3622

Lametria Williams, Underwriting Analyst

E: lwilliams@alliedpublicrisk.com

O: 469.451.5467