

Manager/Supervisor Risk Management
#110– 11/29/12
A twice weekly e-mail training for YCPARMIA members

TOPIC: TENDERING A CLAIM OR SUIT

This is the payoff. The discussion of indemnity clauses and insurance requirements leads up to this – tendering the claim to the contractor and insurance company. The normal scenario looks like this: the member entity forwards a liability claim to YCPARMIA for handling. Early in the investigative process it is determined that the accident might have involved, to some degree, work performed under an entity contract. YCPARMIA will then request that the member entity provide us with a copy of the contract, a copy of all insurance certificates and additional insured endorsements. We also request the identity of the entity employees that are most familiar with the contract and the work being done. After reviewing all information a decision is made on whether to tender the claim.

A letter is then sent by YCPARMIA to both the contractor and the contractor's insurance company tendering, or demanding, indemnification and defense of the claim. This is often the first time that the contractor truly understands that they have taken on a contractual obligation independent of their insurance coverage. The letter usually includes a copy of the claim, a copy of the pertinent contract language, a copy of the insurance certificate and endorsement, and any other investigative materials that we feel will influence their early acceptance of our tender.

At this point the entity sometimes gets push back from the contractor claiming how unfair the hold harmless provision is, how they did nothing wrong, how it damages their business and their relationship with the entity. YCPARMIA will respond by telling them that they entered into a contract, and that for the financial protection of all of our member's collective interests we have no other option but to vigorously enforce the provisions of the indemnity clause. It is important for the contractor to understand that their assertion that they did nothing wrong does not relieve them of their contractual duty to defend and indemnify the entity; YCPARMIA has spent millions defending claims we didn't owe.

The contractor's insurance company's response often references their need to investigate, and it is unfortunately not uncommon for a carrier to unreasonably delay, or stall on their acceptance of the tender. At that point YCPARMIA formally reminds them of their obligation under California's Fair Claims Practice statutes to investigate and respond. A letter is sent to the contractor advising them that their insurance carrier has not yet accepted the tender, and that we will be looking to the contractor for defense and indemnification regardless of what position is taken by their insurance carrier. That usually triggers interaction between the contractor, the contractor's agent or broker, and the insurance carrier.

In most cases the tender is ultimately accepted, sometimes with a reservation of rights by the insurance carrier. YCPARMIA then places the appropriate member entity staff in contract with the insurance carrier's adjuster and/or defense counsel. If the tender is denied, YCPARMIA will decide what further legal action will be taken, if any, against the contractor and/or their insurance carrier.

Next topic: Waivers