

## Manager/Supervisor Risk Management

#98– 10/16/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: INSURANCE LIMITS – HOW MUCH?

The entity requires insurance from its contractors to insulate the entity from the potential of having to pay damages to a third party claimant, and to give financial integrity to the hold harmless promise found in the indemnification clause of the contract. The most common issue of dispute is how much insurance is enough to protect the entity from exposures that grow out of the contract?

There is no single, correct, universal answer to what a contractor's general liability and auto liability insurance limits should be. Member entities have their standard minimum requirements – most often \$1M per occurrence (moving towards \$2M) – but depending on circumstances that number can, and should move much higher. A good argument can be made that it should never be lowered.

A million dollars sounds like a lot of insurance, but in the world of claims and lawsuits it is often inadequate. The core problem is that it is impossible to predict the severity of injuries growing out of an equally unpredictable accident – there are just too many variables. Identical accidents can produce wildly different results; there usually is a wide range between the worst case and the most likely scenario. Somewhere in that range is a point that can be identified as the entity's risk tolerance.

It helps to remember where a claim's value comes from. There are basic damage components: property damage, wage loss, medical expense and pain and suffering. They are all impacted by who the claimant is, how badly injured they are, and how well they recover. Where they treat, what they do for a living, who their attorney is, sympathy, disfigurement – all are variables on the list that affect the value of the claim. A potentially huge factor is the number of claimants; a car driven into a ditch might have one person in it, or there might be six, each with their own injuries and damages. We also have to consider potential future damages. Future medical care, lost wages, and pain and suffering are often speculative, but are considered as potential damages. Lastly, a cost that often greatly exceeds the value of the claim is defense costs and attorney fees. When defense counsel is getting paid a minimum of \$150-\$200 an hour, the costs can add up very quickly, and these costs are incurred even on cases that we win.

To all of these damage factors you have to apply liability to determine the claim/case value. Is there comparative negligence that will lower the entity's exposure, or some aggravating factors that will make things worse? Is the case defensible, or is our exposure complete?

The lack of predictability leads to the difficulty in establishing limit requirements. The vast majority of cases will fall well below the standard \$1M limit, but there will be a few that exceed it. The question then becomes can the entity recognize the potential exposures that deserve higher limit requirements and have the commitment to mandate compliance with those needed higher limits?

Next topic: Insurance Limits – Contract Value