

How to Protect Yourself from Contractor Liability

By Mike Benmoschè

A New York state carwash owner agreed to have an electrical contractor make some repairs at his location. While on the site, the contractor decided to use a ladder he spotted in the tunnel rather than going out to his vehicle for his own. He climbed to investigate the damage and fell and injured himself. Our insurance company has set aside over \$150,000 in reserves to pay this loss.

Why you ask?

What did our carwash operator do wrong?

The answer is very little.

However, what you may not be aware of is that this incident falls under the New York Labor Law Section 240-241. This law holds a general contractor (the person or entity hiring the sub-contractor) absolutely liable for a job-related accident resulting in injuries from an elevated work site or by a falling object. There is no regard for negligence.

Now your insurance rates go up and you even jeopardize your ability to obtain renewal insurance.

How can you protect yourself and your insurance company from paying these claims?

There are certain ways for you to transfer the exposure for these losses back to the subcontractor who may be ultimately responsible for the injuries. Some common transfer mechanisms are contractual indemnity and additional insured status on the sub-contractors policy.

Additional Insured Status

You should require that your firm be named as an additional insured on each subcontractor's general liability policy. Additional insured status will usually require the subcontractor's insurer to defend and indemnify your company in any lawsuits arising out of the subcontractor's alleged negligence, thereby preserving your own insurance coverage; generally, there is a very minimal expense, if any, to the subcontractor in adding you as an additional insured on his policies.

Certificate of Insurance

It is highly recommended that the owner of the carwash require the subcontractor to supply a certificate of insurance. This would furnish you with evidence that the subcontractor has liability, workers compensation and auto liability as well as confirm that you have been added as an additional insured.

Contractual Indemnity/Hold Harmless Provision

This is a provision in a contract by which the subcontractor agrees to defend, indemnify and hold your company harmless for the injuries and damages to a third person which results from the subcontractor's work. You should contact your attorney to discuss indemnity issues and appropriate contract language.

Enforcing these preventative measures does not neces-

sarily solve all the issues associated with these types of claims. However, it provides an effective defense that will help minimize your potential for losses from these kinds of exposures. This will help protect one of your most important assets; your insurance protection. ■

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Mike Benmoschè

2004 NYSCWA SCHEDULE OF EVENTS

APRIL 13

Evolution of Detailing Dinner Meeting, Long Island
Sheraton Long Island Hotel, Smithtown

MAY 19

Spring General Membership
Meeting & Carwash Tour
Buffalo/Niagara Marriott Amherst

JULY 28

Summer General Membership Meeting & Carwash Tour
Sheraton Long Island Hotel, Smithtown

SEPTEMBER 28

Fall General Membership Meeting
& Carwash Tour, Fishkill Holiday Inn, Fishkill

OCTOBER 18-20

NRCC, Atlantic City, NJ Borgota

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