

Risk Management and Insurance Claims for Municipal Corporations and Public Entities

Municipal Corporations and public entities face a myriad of risks and exposures. Risks include fire, product liability, fidelity, boiler and machinery, surety, burglary and theft, commercial multiple peril liability, toxic exposure, financial guaranty, credit, worker's compensation, group accident and health, inland marine, allied lines, acts of terrorism, cyber risk, law enforcement liability, public official liability, and other potentially insurable risks.

Almost every municipality has contamination under roadways from common sources like gas stations, manufacturing plants and local industries. The Municipality may not be aware of soil or groundwater contamination until someone excavates, complains or commences a lawsuit. Municipalities may be liable for contamination caused by others that moves from an adjacent property onto or under a municipal road and continues under the road and onto another third party's property. A municipality may be obliged to investigate indoor air quality and extensive levels of vapors emanating from abutting or down gradient properties. It may have a duty to warn third parties of contamination. When the municipality becomes aware that contamination is flowing through its roadway, it may have an obligation to take steps to prevent further contaminant migration beyond the road, even though it is not the polluter.

Municipalities should demand indemnities from polluters as an appropriate solution in certain circumstances. An indemnity may provide for recovery of incremental costs of road reconstruction related to contamination, third-party claim costs and costs to respond to actions that regulators may take such as issuing investigation and clean-up orders.

Some of the environmental exposures faced by municipalities include: historical contamination from landfills, manufacturing, scrap yards, illegal dumping, or burial of hazardous materials, storm water runoff, natural resource damages, vapor intrusion; easements that cross municipal owned land which may leak or spill hazardous materials; corroded wastewater and storm water sewers; excavation through and spreading of unknown preexisting contaminated soil; impacts to groundwater from drilling and excavation work; old and/or unknown leaking underground storage tanks impacting underground utilities during construction; collapse and/or explosion during and after construction; spill of oils/fuels/chemicals brought onsite; vandalism; sick building syndrome; mold; asbestos; lead; loading and unloading products/materials from trucks, railroad, barges, aircraft over unsealed ground; above ground or underground storage tanks; adverse reactions and interactions of chemical compounds that accidentally commingle during a fire.

Is your municipality adequately insured for the risks that it may be exposed to? Is it only after a catastrophe or major loss happens and the municipality is exposed to substantial liability, loss of revenues, and interruption in the services, that the municipality realizes that its insurance policies are inadequate to cover the loss. Often the Broker who procured the insurance policy may prove, upon investigation, to be part of the problem

and a factor materially contributing to the lack of proper coverage or malfeasance in the presentment of an insurance claim. We strongly recommend that an insurance audit be conducted by a qualified professional to verify that the municipality is covered consistent with exposures that your municipality faces. We can assist in counseling the municipality in this important risk management decision.

I head up the policyholder litigation department at the firm. Walder, Hayden & Brogan, P.A. has earned a statewide reputation as one of the most successful commercial and insurance coverage litigation firms on behalf of policyholders. We have obtained millions of dollars in recoveries from major national insurance companies, brokers and agents on behalf of our policyholder clients. The firm provides counsel on all phases of complex insurance claims resolution from the proper and prompt presentment of claims, often utilizing nationally recognized experts in the field, engaging in negotiated alternative means of resolution, including mediation and arbitration, retaining prominent former State and Federal Judges - through litigating to trial, if necessary, significant insurance coverage disputes in State and Federal Courts. When major insurance companies understand that Walder, Hayden & Brogan is prepared to go the distance and fight "Goliath" that is when a fair and prompt resolution is often achieved.

We would be please to consult with you should the need for our legal services be necessary. To arrange a meeting, please contact me at 973-992-5300 Ext. 322 or mjfaul@whbesqs.com. Please feel free to visit our website at www.whbesqs.com.