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Insurance/Indemnification of a Property Owner from Claims arising from a Negligent Contractor

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Commercial and residential property owners commonly enter into service contracts with third-parties for services such as snow and ice removal from their premises. If a contract is properly drafted it will contain insurance and indemnification provisions intended to allocate responsibility to the contractor. For example, to carry liability insurance with specific terms and in minimum amounts with the owner named as an additional insured, and to indemnify and save harmless the owner for claims made by third-parties such as a "slip and fall" due to the act or omission of the contractor.

In August 2011, the Ontario Superior Court of Justice in **Papapetrou v. 1054422 Ontario Limited** dealt with a motion for summary judgment by a building owners against their contractor as a result of the owners and contractor being sued for injuries suffered by a woman when she fell on icy steps. The owners' motion sought the plaintiff's action be dismissed against the owners, or in the alternative, for an order that the snow removal contractor assume the defense of the owners.

The contract with the snow removal contractor provided for the contractor to:

A. maintain a commercial general liability insurance policy with minimum limits of $2,000,000;

B. name the Owners as additional insureds under the policy;

C. assume sole responsibility for its work, take all reasonable and necessary precautions to protect persons and property from injury or damage and to indemnify and save harmless the Owners against all claims etc. incidental to or arising out of the performance or non-performance of the contract by the contractor.

Unfortunately, the insurance policy taken out was for $1,000,000.00 and did not show the Owners as additional insureds. The Owners brought this motion to force the contractor to defend them at its cost and expense and to indemnify them for any damages awarded to the plaintiff in the action. It was not stated whether or not the Owners received and failed to check the insurance policy prior to the contractor commencing work.

Although the contractor failed to obtain liability insurance in accordance with the contract provisions, the court held that this failure to meet its contractual responsibility should not permit it to escape responsibility to defend/indemnify the Owners. The court ordered the contractor to assume the property owner's defense, and indemnify it from any damages awarded to the plaintiff in the action.

The Lesson: Make sure your service contracts include insurance and indemnity and save harmless clauses with coverages and in amounts that are reasonable in the circumstances and that you are named as an additional insured. Then make sure you or your property manager obtain a copy of the policy or a certificate of insurance and send it to your insurance advisor to ensure you are covered adequately.

In this case the Owners spent time and money – even though the Court found in their favor –that they could have saved merely by getting the contractual insurance evidence at the commencement of the contract. If the contractor went bankrupt (and its insurer was not a party to the Owners' motion so arguably the insurer could claim it was not required to cover the Owners) then the ruling in favor of the Owners would be a "hollow" victory. Once again, an example of how being proactive by ensuring that the terms of your services contract are fully complied – especially where claims are common – is more cost effective than having to go to Court to enforce contractual terms that the parties failed to enforce.