

Manager/Supervisor Risk Management

#63– 6/14/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: DEEP POCKETS –JOINT AND SEVERAL LIABILITY

An attorney sitting in his office looks up as a new client enters. It is the proverbial million dollar case. An innocent victim walking down the sidewalk is hit by a car -- serious injuries, big medical bills, lots of lost wages, and great emotional appeal. His hope fades a bit when he finds out that the car that hit his new client was 15 years old, driven by a young unemployed worker, and only carried minimum insurance limits. A million dollar potential, and only \$15K in assets; obviously the attorney needs to find more money, a deep pocket. The car is too old to support a products claim against the manufacturer, but maybe there was something wrong with the road – it will only take a few percent of fault...

In the great majority of states tort defendants (tortfeasors) are “jointly and severally” responsible for the injured party’s damages. Under this doctrine the claimant can recover their entire amount of damages from one, any, or all of the responsibility parties regardless of their share of fault. The responsible parties are then free to go after each other for contributions to reimburse for their share of fault. When you have a joint-tortfeasor with no assets, like our car driver above, it is likely that the deep pocket, the road owning entity, will be left holding the bag. Prior to 1986 these financial hits on California’s local governments were significant.

In 1986 California’s Prop 51, the Fair Responsibility Act, was passed. It divided damages into two types, economic and non-economic. Economic damages are the out of pocket, measurable expenses like medical bills, wage loss, and property damage. Non-economic damages are pain and suffering. There is no set proportion between the two, but in the most general terms we can say that economic damages might make up a third of a settlement, while non-economic makes up the other two-thirds.

Prop 51 modified the existing joint and several liability doctrine. Tortfeasors are still jointly and severally responsible for economic damages, but only responsible for their percentage share of non-economic damages. This means that in our example both the driver and entity would be responsible jointly for the claimant’s medical bills and wage loss, but that the entity would only be responsible for their percentage share of the pain and suffering. Using our 1/3 --2/3 apportionment in this million dollar case, and setting the entity’s share of fault at 5%, the entity might owe the claimant \$318,333 (a third of the million dollars less the driver’s \$15K insurance policy) for economic damages, and \$33,333 for the pain and suffering (5% of the non-economic damages). Still a big hit, but much better than what public entities face before Prop 51 (the full \$1M less the driver’s \$15K insurance).

What should the supervisor take from this? Take a hard look at all accidents, and recognize that public entities are still seen as deep pockets. Even a small percentage of comparative negligence will support a full recovery of economic damages, and a percentage of non-economic damages. This gives claimants and their attorneys’ great motivation to find a way to bring the entity into their claim/suit.

Next topic: Reasonable Defense