



Hiring Vendors: Is Requiring Evidence of Workers' Compensation Enough Coverage?

By Timothy Cline, CIRMS, Timothy Cline Insurance Agency, Inc.

The height of the ceilings in the Common Area hallways made changing the light bulbs difficult. For years, the condominium association's Board of Directors had relied on a licensed and insured electrical contractor to send out a worker each month to change the burned-out light bulbs as needed. It was usually the same electrician, John Bilinski, who was assigned to the project. A journeyman electrician with 20 years under his belt, John began to resent the monthly visits. Changing light bulbs was hardly challenging. John and his employer both knew the work drastically underutilized his knowledge and abilities. Apathy began to set in. John could change light bulbs in his sleep. Maybe that's why he fell from the ladder that early Friday morning. He had become overly confident; a bit too relaxed. The 18-foot aluminum extension ladder made a tremendous sound competing only with the loud groan John emitted as both electrician and ladder crashed to the floor.

An ambulance was dispatched and John was quickly transported to the closest emergency room. Within minutes of his arrival the attending ER doctor began to triage the wounds: broken arm, cracked rib, punctured lung. "How did this happen? Was this a work-related injury?" the nurse asked John. These questions were asked to determine if this might be a workers' compensation loss.



"Of course it's a workers' comp loss and it's going under the electrical contractor's policy, not our HOA's policy." the board president, Sally Johnston, confidently exclaimed when she was notified. "John is their employee. He doesn't work for us." Sally contacted the management company to confirm that the contractor had workers' compensation coverage. She expressed a sigh of relief when a copy of the workers' comp policy declarations page was emailed to her smartphone.

The healing and rehabilitation took months and John was also relying on his employer's workers' compensation carrier to pick up the loss of wages. By month seven, when John returned to work, the carrier had incurred \$123,019 in claims expenses.

If you think the carrier just paid this claim and walked away you'd be wrong. The manager had failed to ask the electrical contractor for a Waiver of Subrogation endorsement on the workers' comp policy in favor of the HOA and the manager. Such an endorsement would have precluded the electrical contractor's workers' compensation carrier from subrogating against both the Association and the management agent for the money paid to the doctors, the hospital and the injured worker.



Subrogation is a legal right reserved by an insurance carrier to pursue a party the insurance carrier hopes to prove was negligent and responsible for a covered loss. In this case, the workers' comp carrier hoped to prove that the Association and the management agent were negligent and legally liable for the resulting damages.

The Association had no control over how John Bilinski completed the tasks assigned to him so it's hard to understand how liability could be assigned to them, but the ladder that he was using that particular day belonged to the Association, not to Mr. Bilinski or his employer. Subrogation units at insurance companies consist of a room full of lawyers whose sole task is to recover money.

The Association's General Liability coverage typically contains an exclusion which eliminates coverage for work-related injuries. The management agent (also the target of the subrogation action) has a "premises only" provision which restricts their liability coverage to the management company's physical address only (not the properties they manage). Nevertheless, the management agreement between the Association and the management agent requires the Association to indemnify and hold the manager/management company harmless.

Best practices dictate that common interest developments require more than just evidence that the contractor or subcontractor have workers' compensation coverage - but the workers' compensation carrier must contain a Waiver of Subrogation endorsement in favor of both the Association and the management company - helping to eliminate the possibility that either entity might be the subject of a recovery/subrogation action down the road.



By Timothy Cline, CIRMS
Timothy Cline Insurance Agency, Inc.



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