

Waivers of Subrogation

Objectives

The objectives of this large loss claim review are to:

- Examine a CIRMA property loss resulting from a waiver of subrogation;
- Discuss CIRMA's contract review deliverable; and
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

Incident Background

The member entered into a contract with a third-party contractor; a plumbing company, to complete renovations of several restrooms and shower areas within the high school. After completing work on the date of the loss, one of the bathroom's newly installed supply lines became disconnected and caused water to flow freely overnight. While the morning custodial staff conducted their daily walk through they noticed significant water present over the gym floor. Once the source of the water leak was identified and turned off they began trying to dry out the gym floor. After several hours it was observed that the gym floor had significant bowing, curling, and warping; making the gym unusable.



Investigation and Damages

- This was a capital improvement project to update the girls and boy's locker rooms
- Each locker room consisted of multiple bathroom stalls, and sinks
- Each locker room also consisted of a large shower area with multiple shower stalls.
- The locker rooms are connected to the gymnasium, and are accessible from the gym area and hallway.
- The shower areas within the locker rooms each share a common wall with the gymnasium.

- The gymnasium polyurethane wood floor was the original for installed when the school was built in the 1970's
- It was determined that the mastic used to secure the wood floor contained asbestos.
- The plumbing contractor was working on the boy's locker room the day prior to the loss.
- The contractor had installed new copper supply lines to the shower fixtures.
- The supply lines where installed by soldering the fittings together.
- After completing the soldered fittings, the plumber tested the lines to determine if there was a leak present.
- After only a brief period of time of observation the plumber left for the day without turning off the main water supply.
- At some point after the plumber left and school was emptied, one of the fittings failed, and since the water supply was not turned off, the water was allowed to run freely until the morning.
- It was determined that the fitting failed because it was not properly inserted and the pressure of the water supply forced the joint apart.

CIRMA Liability Assessment

CIRMA is 100% responsible for the damage caused by the water to the gym floor. The school district signed and entered into a contract with the third-party plumbing contractor without reviewing all sections of the contract. It was determined that the contract contained a waiver of subrogation within the "insurance / indemnification" section of the contract.

Definition -- A *Waiver of Subrogation* is an endorsement that prohibits an insurance carrier from recovering the money they paid on a claim from a negligent third-party.

The language in the contract was clearly written, and stated;

"The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each or the other, and (2) the plumbing contractor, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by water or other causes of loss to the extent covered by property insurance obtained pursuant to this agreement or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The owner or Contractor, as appropriate, shall require of the plumbing contractor, separate contractors described in this agreement and any sub-subcontractors, agents and employees of any of them by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall require waiver by endorsement or otherwise."

This language within the signed and executed contract prevented CIRMA's Subrogation Team from financially recovering from the third-party plumbing contractor. In addition, the original project was delayed as a result of this incident.

As a result, the claim cost approximately **\$300,000** inclusive of their deductible.

Key Recommendations/Action Items

CIRMA Risk Management is seeking feedback from the School District Advisory Committee on the recommended best practices to prevent these incidents from occurring.

- Consider utilizing CIRMA's Contract Review service prior to signing and executing third-party agreements.
- Remove / amend "waiver of subrogation" language from agreements prior to signing.
- Utilize CIRMA's Risk Management Best Practices Guide on Risk Transfer as a reference when creating and drafting third-party agreements.

For more information on this topic, please contact your CIRMA Risk Management Consultant.