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|  | **Ceiling Collapse[[1]](#footnote-1)****Confidential Information For** **Freedom Mutual Claim Representative** |

You are a claim representative at Freedom Mutual and have been responsible for the investigation of this claim. You’ve been with Freedom Mutual for less than a year and are not the primary decisionmaker on the file. You were instructed to ask your manager for advice, but the manager is not always accessible. Because you do not want to be accused of doing something wrong, you have relied heavily on outside counsel in the case.

Based upon your investigation and the discovery done thus far, it is uncontested that your insured, IHP, acted as its own architect/engineer in the design of the hotel at which the accident took place. Thus, to the extent that design issues were the basis of liability, and *if there were no indemnification and hold harmless agreement here,* IHP would be on the hook. But in fact, in your view, Suffolk Plumbing should bear the cost of settlement because it undertook to indemnify and hold harmless IHP for damages resulting "in whole or in part" from Suffolk’s negligence. This language was contained on the $9,000 Purchase Order issued by the hotel to cover Suffolk Plumbing work on the job. Suffolk never objected to the clause, and thus accepted the terms. You have not questioned counsel about whether this clause would be upheld but you don't see why not. Unless you learn otherwise, you will continue to take the position that Freedom Mutual is only willing to contribute nuisance value to a settlement.

Although you do not believe they are relevant to your client in light of the indemnification clause, you have reviewed the issues. Unfortunately, because the plaintiff's expert's report detailing its theories of negligent design was not available until a few days ago, you could not include it in your case analysis prior to the mediation. According to the plaintiff's expert, the plaster ceiling was hung from a system of anchors embedded in the cement slab over the area. Each anchor secured a hanger that continued on the horizontal for approximately 2" and then angled to vertical, extending down to a bottom grid onto which the ceiling plaster was placed from the underside. The hangers were several feet apart and several feet long, creating a crawl space above the plaster ceiling and below the cement slab. A system of plumbing pipes and other conduits ran through the space servicing the facilities above. There were four access panels to the crawl space, through which workers had to climb to gain access to all of the piping and other equipment inside. Workers standing on ladders underneath the access panels could reach to some but not all areas necessary for repairs.

The plaintiff's expert found the ceiling design negligent in several ways. First, the building plans state that anchors in the top cement were designed for a "dead load" of 200 p.s.i. According to the experts, 200 p.s.i. is only 70% of the actual dead load that should have been anticipated. In fact, because the access panels were spaced so far apart, the ceiling should have been designed for "live load" to support men moving around in the space, as occurred with regular maintenance and repairs since the building opened. In addition the expert found that the types of hangers used were inappropriate. Because the hangers contained an angle—running horizontally before angling to vertical—they acted as a lever, literally prying the anchors loose as stresses occurred. Thus with respect to the hotel, the plaintiff's expert claims that the design was negligent, or, at minimum, that the maintenance and operations manager should have known not to put a "live load" in the area. Special ladders or other apparatus might have been used or another access panel cut if necessary to gain access to remote portions of the space.

Expert issues (and indemnification) aside, your counsel has taken the position that Suffolk's plumbers were the proximate cause of the accident. The reports from the scene indicate finding four cut hangers in the debris. The equipment that Suffolk's crew carried into to the ceiling interior was capable of cutting through the hangers. Although the head of crew denies having cut any hangers, he did acknowledge in deposition that while laying additional pipes the lines occasionally ran into the hangers, requiring them to fit angles around the hangers. (Only two or three pipe angles were found among the debris.) In view of the cut hangers, you do not believe his denial will be found credible. Thus, it should be clear that Suffolk caused the accident by cutting hangers. There is no indication that the ceiling was loose or dangerous before that moment.

Liability issues aside, you have taken the position that the wrongful death damages should be modest in this case. Your investigation of the deceased reveals that he was employed as a bartender and in various construction jobs while attending a night program in computer programming. Between the ages of 21 and 23, he was arrested twice for operating under the influence of alcohol. The first time he was found not guilty and the second time he pled guilty and entered a mandatory alcohol treatment program. The deceased also appears to have a juvenile record that was sealed by the court.

Counsel has confirmed that under the state Wrongful Death Statute, recovery by the estate includes (1) the decedent's pain and suffering and (2) the value of the estate's loss of financial support, companionship, and consortium. You are not aware of any pain or suffering, since the deceased does not appear to have regained consciousness. The deceased was not likely to have supported his sister or his father financially; in all likelihood, he would have married and established his own family. You have analyzed the full settlement value of the case at $225,000 to $450,000. At this point you are only authorized to pay $75,000, which you calculate as the defense costs plus a small amount for risk. You would not pay more unless convinced that Freedom Mutual's defenses and its indemnification claim are weaker than you think. You would be willing to recommend a higher number to your manager if it seems right to you. You should be able to reach him by telephone during the mediation.

You suspect that the Guarantor representative wants badly to settle the case. Over the past few months, Guarantor’s adjustor has called you several times, but you were always too busy to return his calls. At a recent deposition the adjustor tried to talk about a joint settlement approach with you and with your counsel, who responded by saying: "This is a case about a low-life who met an untimely accident. He was still a low-life, and it's not Freedom Mutual's responsibility to pay whatever that was worth, it's yours to indemnify. If your plumbers hadn't been so careless, we wouldn't have to be arguing about damages.” Now that the plaintiff's counsel has suggested mediation you suspect that they are eager to get a deal too. You hope that this mediation will bring the plaintiff into a reasonable ballpark and succeed in getting Guarantor to pick up the lion's share of it.

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