**Ceiling Collapse**[[1]](#footnote-1)

**Confidential Information for Guarantor Insurance**

You are a senior claim representative at Guarantor and are responsible for handling the claim against Guarantor's insured, Suffolk Plumbing. You do not know much about the deceased except that he was temporarily employed as a bartender, had not finished college, and had worked in various construction jobs while taking a program in computer programming. He had apparently stopped into the hotel to see a friend.

You analyzed the file prior to contacting plaintiff's counsel, but did not receive the plaintiff's expert report until a few days prior to the mediation session. As a result the information contained in that report was not included in your case analysis. Still even without the expert's report, you could see that IHP and your insured, Suffolk Plumbing, would both have a difficult time with the liability question. The deceased literally had chunks of cement fall onto his head. There is no issue of contributory negligence here.

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 which 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 ran through space, servicing the restaurant and bar facilities above. These plumbing pipes were kept in place by an independent hanger system. 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 standard ladders underneath the access channels could reach to some but not all areas necessary for plumbing repairs and other work.)

The plaintiff's expert found the 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 expert, 200 p.s.i. is only 70% of the actual dead load that should have been anticipated. And, 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 has occurred with regular maintenance and repairs since the building opened. In addition the expert found that the types of hangers used were inappropriate: their angle acted as a lever, literally prying the anchors as stresses occurred. Thus with respect to the Hotel, the plaintiff's expert concludes that the design was negligent, or, at minimum, that the maintenance and operations manager, who had considerable engineering expertise and had overseen the plans, should have known not to put a "live load" in the area.

Unfortunately, the plaintiff's expert points to Suffolk Plumbing as having precipitated the accident.Reports from the accident scene state that four cut hangers were found in the debris. The equipment Suffolk Plumbing carried into the ceiling interior included tools capable of cutting through the hangers. Based upon that evidence, the expert concludes that Suffolk's people precipitated the accident by cutting hangers, which further weakened a negligently designed ceiling while three or four workmen were inside. Although the head of Suffolk's crew denies having cut any of the hangers, he did acknowledge in deposition that while laying additional pipes to service the restaurant above, the pipe 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.) Your defense counsel has also spoken informally to other members of the crew, who have not yet been deposed. He reports that they would admit that "they might have cut a few hangers in the way...everything seemed pretty sturdy up there." This information has not yet been discovered by the other parties, but would come out prior to trial.

Your attorney has advised you, and you agree, that the chance of Suffolk Plumbing escaping liability on this claim is slim to nil. The problem in this case is that Freedom Mutual, insurer for IHP, has insisted that Suffolk should bear all the settlement cost because of its alleged obligation to indemnify IHP, for damages resulting "in whole or in part" from Suffolk's negligence. This language was contained on the Hotel’s standard form Purchase Order issued to cover Suffolk's quote of $9,000 for its work on the job.

You have discussed this issue with your attorney. It appears that at least in this state, corporations cannot easily contract away responsibility for their own negligence. Under court precedents, Freedom's argument will be particularly difficult where the indemnification language was not contained within a formal negotiated contract, but on a standard form purchase order. Thus, where IHP's negligent design appears so clearly to have caused the accident, and Suffolk was "merely the straw that broke the camel's back," you do not believe that Suffolk would be required to carry the entire liability burden.

Over the past few months you have tried unsuccessfully to engage Freedom Mutual in a meaningful discussion about the case, but the representative repeatedly failed to return your phone calls. When you attended the deposition of the Hotel maintenance and operations manager, the claim representative for Freedom was also present. You attempted a conversation about settlement with him and with Freedom's counsel, who said, "This is a case about a low-life who met an untimely accident. He was still a low-life, and it's not Freedom'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." You suspect that counsel was merely trying to impress his client, but you regret his unwillingness to talk realistically and fear that the Freedom representative, who appears inexperienced, may be fooled by counsel's bravado.

It is very difficult to determine the full exposure in a wrongful death case, particularly where the deceased was clearly an innocent victim. The potential jury award should be limited, but you can never tell. You do know that if the defendants fight with each other at trial, they risk incurring jury anger. You estimate the total exposure at roughly $400,000 - $750,000, certainly no higher. You will have a better sense of the exposure after you have had an opportunity to assess the witnesses for the estate—the deceased's family. Your counsel has estimated that it will cost $60,000 to prepare for and try the case. Suffolk Plumbing's policy limit was $500,000 per occurrence. You would hope that the case could be settled for a total less than $600,000. Guarantor would be willing to pay half of a fair settlement, or up to $300,000, to settle out independently.

You don’t know the financial circumstances of the plaintiffs. Trial will not be reached for two years (although interest would run from the date of filing of the suit). In your view, both Freedom and the plaintiff need to be brought into a reality zone. You hope the mediation will accomplish this.

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