

News From the Homefront

Insurance: A Sad Story with Two Important Morals



Steven A. Adelman
Adelman Law Group, PLLC
Vice President,
Event Safety Alliance

I received a call recently from a highly experienced, well-trained rigging professional. He was looking for a lawyer to defend him in a personal injury lawsuit in which a performer got hurt on a job on which he worked. From his description, it sounded like he was simply rounded up with the usual suspects.

This is a pretty typical scenario. At the beginning of

a lawsuit, the plaintiff's lawyer doesn't know who will be most responsible for his client's alleged damages nor who has money to pay, so the Complaint often casts a wide net and names every reasonably likely culprit. As the case proceeds through discovery, that lawyer figures out who is really responsible for whatever harm occurred. In an effort to finance his case against the main target defendant(s), the lawyer then tries to extract a more modest settlement from the small fry in exchange for dismissing them from the case, allowing them to stop the bleeding.

Even for a person or business that arguably does nothing wrong except work on a job where something bad happens, they still routinely get dragged into litigation that they have to pay to defend and then pay to get out. And by "they," I obviously mean "you."

I leave for another time and beverage any conversation you would like to have about the injustice of having to pay to defend claims that, at least as to you, have no merit.

I could not help in this case.

Our innocent rigger's second problem was that hiring a defense lawyer costs money. Normally, that solution involves reporting the claim to one's insurer, which in turn hires a lawyer from its panel of approved counsel in that state, and that lawyer will represent you. Other than companies that pay big premiums or deal with very

specialized risks, you often don't get to choose your lawyer, and he or she likely won't know much about what you do for a living or how to defend the claim against you. But at least their hourly fee doesn't come out of your pocket.

Alas for the rigger in this story, who usually worked for large companies under the umbrella of their insurance policies, he was working as an independent contractor on this job, made no provision for his own insurance coverage, and therefore had none when he needed it.

When I first drafted this tale of woe, I thought our hero probably could not have bought his own coverage for this show anyway. Insurers usually charge a premium to insure risky activities that could lead to significant claims, and rigging is generally considered one of those activities. That description remains mostly correct, but I recently learned that ProSight Specialty Insurance launched a program in June, 2015 which allows Certified Technicians to buy affordable insurance coverage for themselves. Here is a description of the ProSight program from the person who put it together with ETCP, Neil Huff of insurance broker Taylor & Taylor:

The ProSight program provides a Commercial General Liability (CGL) policy with a \$1,000,000 per occurrence limit for Bodily Injury and Property Damage. The Property Damage coverage applies to property of others that is not in the care, custody, and control of the named insured (rigger, electrician, etc.). For example, a rigger drops a truss on a guitar tech causing bodily injury, and the band's equipment is damaged as well as lighting installed on the truss. The CGL policy would cover the injury to the guitar tech and the band's property, but damage to the lighting rig would not be covered. For that, ProSight also offers a Third Party Property Damage policy that would provide up to \$500,000 coverage for damage to the lighting rig (personal property of others). The combined premium for both policies on an annual basis is less than the cost of most people's homeowner's policy. If the Certified Technician also rents the gear for a show, they would need to purchase an Inland Marine policy to cover rented equipment. ProSight will provide a separate quote for Inland Marine, Workers Compensation, Umbrella Liability, Auto (owned and

News From the Homefront

rented vehicles), etc., for additional premium per the specific needs of the Certified Technician.

Because I didn't know about this ProSight insurance program, I thought that even after a respectable rigging career, our man lacked the scratch to buy insurance that could have gotten him out of this jam. I was wrong. Now I'm even more frustrated with his situation, because it could have been avoided.

One moral of this story involves contracts. This rigger did not require that he be added as an "additional insured" on the liability insurance policy of the vendor who hired him. This could have been written into the contract which secured his employment, along with the date of the job, the nature of his responsibilities, and his compensation. Even if those things appeared only in an exchange of emails rather than a formal document with the word "Agreement" in the title, they would have been legally binding. Even verbal agreements are legally binding, although I don't recommend them because they're obviously hard to prove. With a few keystrokes at any time during negotiations, he could have protected himself.

The second moral involves insurance. Without coverage, this rigger was going to have a hard time proving that his

work met the industry standard of care, and that nothing he did caused the performer's injuries. He was going to have to pay a local lawyer out of his own pocket, and any settlement he might pay would come from his own pocket too. All because he thought he could do one show without any insurance. Now that we all know that there is relatively inexpensive coverage available for people exactly like you, gentle reader, there is no excuse for performing your work naked anymore.

We all try to do our jobs safely enough that no one ever has to make a claim. That is obviously the best protection of all. Even careful people, however, should also protect themselves with good contract language and appropriate insurance coverage. To paraphrase Winston Churchill's famous quip about democracy, our civil justice system is the worst one ever invented, except for all the others. Contract language and insurance may be the worst systems ever devised to protect you from losses, except for all the others. Just as with every other type of personal protective equipment, the only people who should work without coverage are those who can afford to be exposed.

To discuss ProSight's insurance for Certified Technicians with Neil Huff at Taylor & Taylor, please contact him at nhuff@taylorinsurance.com or 864-836-4197.



HOLIDAY CARDS - CALL FOR DESIGNERS

Behind the Scenes Holiday Cards have become a tradition in the industry for those who want to spread holiday cheer while supporting their colleagues in need due to serious illness or injury. Each year designs have been created and donated to the charity by everyone from Tony Award winners to high school design students. Behind the Scenes is seeking designers for their 2016 cards.

The design guidelines are very simple and can be viewed at: www.behindthescenescharity.org/holidaycard_guidelines

DEADLINE IS JUNE 15th. For more information or to submit your design, please contact Lori Rubinstein at lrubinstein@behindthescenescharity.org.

DON'T LEAVE YOUR COLLEAGUES IN THE DARK

www.behindthescenescharity.org