

EXHIBIT

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R.p.0300

Henderson, Laura
From: Henderson, Laura
Sent: Tuesday, January 23, 2001 09:33 AM
To: Baker, Patrick
Subject: RE: Insurance Question

The insurance provides 5M per accident above 350K SIR. The SIR applies to damages as well as legal defense expenses (but not to expense of our staff counsel, so we can't bill for your time.)

When we expect that a claim could go into the excess (exceed the SIR), then we need to report it to the underwriter promptly. We continue to defend and manage the claim and make periodic reports to the underwriter. We have an obligation to protect the underwriter's interest, and that necessarily affects our settlement posture within the SIR, however, it does not necessarily obligate the City to pay claims which we believe are not owed. There is some language in the policy that addresses this that you will need to pay particular attention to. I will make you a copy of the contract for you.

This does affect the potential for an immunity defense because immunity is waived to the extent of the insurance. A situation in which there are high economic damages at the time the claim is made pushes us into the range in which Glenn could argue that he's entitled to a trial based on the presumption that, if a jury found for Plaintiff, then some portion of the claim would be covered by insurance and thus immunity would not apply to that portion. He'll probably be looking for a cool 1M or better just based on the medical bills. (This is the dilemma of the low SIR, but we chose it based on the overall financial deal, which was outstanding. As it is, the max this can cost the City is 350K.)

This will be the first case in which we will need to carefully review the wording in my time-honored affidavit and revise to fit the situation. The affidavit now gives an unqualified statement that the City's insurance does not apply to the loss, and I'm not sure how we would need to change that while the economic damages + the City's defense expenses are within the SIR.

So, it looks like we will do battle over this case on its merits. I say defend, defend, defend! We should not owe a penny here, and fortunately, there is lots of non-testimonial evidence to support our case. Has Bo given you any surprises on the evidence?

Patrick, I guess an early strategy question is whether you should handle this without referral to outside counsel just to keep the legal expense down, thus maintaining the distance betw the known economic damages and the SIR. Is there any case law on this? Have any other City Attorneys run into this same situation?

Also, I have a 25K reserve on this case—for legal defense only. Are we at the point of changing that?

—Original Message—

From: Baker, Patrick
Sent: Monday, January 22, 2001 02:44 PM
To: Henderson, Laura
Subject: Insurance Question

PLAINTIFF'S
EXHIBIT

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I am about to send a denial letter to Bo Glenn for his client Linda Jones. Ms. Jones was struck by our police officer on Liberty Street back in September. Her injuries are fairly catastrophic and current medicals are in excess of 200K. Does our excess coverage defeat immunity once the claim is above the self insured amount? Should we notify the carrier? I do not believe that our officer was negligent. Unfortunately both he and Ms. Jones made an identical evasive maneuver

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but his actions appear to fall well short of the wilfull and wanton recklessness required under the law. Your guidance would be helpful.

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