

Daniel P. Costello & Associates, LLC



July 10, 2013

WORK PRODUCT EXCLUSION

Jo Concrete
President Concrete by Jo
Via Email Only

Re: Mega Contractor v. *Concrete by Jo, et al*
Claim No.: JD 4575656

Jo:

Please allow this correspondence to memorialize our conversation of June 25, 2013 in regards to this matter. As we discussed CLM Mutual Insurance has agreed to provide a defense and representation of Concrete by Jo for alleged negligence and construction defects at the Big Slide Water Park in Loves Park, Illinois. In this case Mega Contractor has made a demand for arbitration and joinder against Concrete by Jo. This demand was made in connection with the owners of the Big Slide Water Park \$5 million demand to Bulley and Andrews. We have been defending this matter for sometime, and will continue to represent your interests.

However, your insurance carrier has issued a reservation of rights on this defense and indemnification, and has recently filed a declaratory judgment action. The declaratory judgment action seeks to disclaim coverage both to Mega Contractor as an additional insured under your policy of insurance, **and also seeks to disclaim coverage to Concrete by Jo as a named insured.** I will not be handling any of the coverage action, but I will be defending you on the breach of contract actions by Mega Contractor. If these counts are uncovered under your policy, they may subject your company to liability and significant legal and indemnification expenses.

Your carrier CLM Mutual asserts in the letter and the declaratory action that the policy does not provide coverage for your work, your product, or any type of product recall. In this case there are both allegations of negligence which would be covered by the policy of insurance and allegations of defective workmanship which are not covered by the policy of insurance, and **as such would relieve your carrier of any duty to pay for these damages.** Thus, there is a conflict of interest between the insurance carrier and the insured.

In situations such as this you have the option of hiring counsel of their own choosing pursuant Maryland Casualty Co. v. Peppers (64 Ill.2d 187). The costs of hiring this counsel would be paid by your insurance carrier. By selecting counsel of your own choosing in this case you would be able to effectively eliminate any concerns as to a potential conflict of interest due to the uncovered counts of this case. We discussed this

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fact and whether you would indeed proceed with counsel of its own choosing based upon the allegations in the joinder request by Mega Contractor, and the request for indemnification.

However, in this situation based upon the facts and circumstances of the case, specifically the fact that we have worked on the file for sometime, you are satisfied with the work performed, and your desire to keep us engaged as counsel even if coverage is terminated, you have advised that you will waive any potential conflict of interest presented by the declaratory judgment action and reservation of rights letter. By making this waiver you understand that my firm will continue to move forward with your representation on this matter and will be paid directly by CLM Mutual Insurance Company.

If coverage is terminated we will agree to provide representation at the same rates as agreed upon by the insurance carrier of \$175 for myself, \$150 for partners, and \$135 for associates. A separate agreement will be forwarded if needed if coverage is ever terminated. However you are aware of this real possibility, and the need for direct payment

You understand that despite the fact that our firm has been selected by the CLM Mutual Insurance Company, that **we have a duty to hold your interests paramount and to resolve any conflicts in your favor.** We will also hold all information as confidential except as to inform your insurance carrier as to the progress of the case and any necessary information to resolve this matter. **Please sign and date this waiver and return to me as soon as possible to my email address. Let me know if you any questions.**

Sincerely,



Daniel P. Costello,
Managing Partner

I AFFIRM, that I have read the letter, have been advised, and understand that there is a conflict of interest in the case based on allegations of uncovered loss, and the Insurance carrier disclaiming coverage. After being fully advised, I understand that I have the right to personal counsel, but waive the conflict of interest and will allow your office to represent me in this matter.

X _____ - Robert Concrete, President Concrete by Jo

Date- _____