

The Case of the Last Minute Witness



Risk Factor

Having a mutual hold harmless agreement in their contract with ABC Engineering would have helped XYZ Construction but it would not have prevented them from being named in the suit. Mutual indemnification is a way to allocate risk between the parties so that an insured isn't taking on more than what the law would otherwise require.

the facts

XYZ Construction Management was hired by ABC Engineering to provide construction management services on a new high rise project. During construction, an electrical subcontractor suffered electrical burns when he opened a panel because he did not go through the proper procedures to ensure the panel was de-energized. Due to the injuries he suffered, he sued ABC Engineering for \$2 million in damages and XYZ Construction Management for \$1 million in damages.

An employee of XYZ Construction Management witnessed the incident and had warned the electrical contractor that the panel may be energized. The electrical contractor ignored his warning and started working on the panel anyway. It was thought to be an open and shut case considering the electrical contractor's high degree of negligence.

However, a few days before the case was to go to trial, the XYZ employee changed his story and told one of the attorneys that he wasn't sure if the electrical contractor had heard him when he told him the panel may be energized. While this was thought to be false, there was no time before the trial to determine what damage this testimony might bring.

the result

ABC Engineering and XYZ Construction Management decided to make an offer to settle the case. ABC Engineering and XYZ Construction Management settled with the electrical contractor for a total of \$500,000. XYZ Construction Management was responsible for \$150,000 of the \$500,000 settlement.

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Victor O. Schinnerer & Co., Inc.
Two Wisconsin Circle
Chevy Chase, MD 20815-7022
Phone: 301-961-9800
Fax: 301-951-5444