

What does it mean to tender a claim?

by Carlene Brown

Mr. Smith is driving back from running errands and is travelling through a construction zone when he accidentally runs over an object in the middle of the road, which he thinks was left there by the work crew. He has an estimate done and is told that the repairs to his vehicle will cost him \$1000. He decides to file a claim with the city for his repairs. Who is responsible for this loss and who will pay the claim?

Regardless of liability, when looking at the claim, we first want to address the coverage portion of the claim. For this street project, the city awarded a contract requiring the contractor to procure and maintain, for the duration of the agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work by the contractor, their agents, representatives, employees or subcontractors. (see WCIA Liability Resource Manual ADM.21 for more information) Based on Smith's claim allegations, WCIA tendered his claim to the contractor and its liability insurer for them to investigate and make their own liability decision. In other words, the liability decision is up to the contractor and their insurance carrier; it is not decided by the city or WCIA.

When we tender the claim to the contractor, we are requesting that the insurance carrier for the contractor provide us a written decision on our tender demand, and asking them if they question or challenge the coverage. If the contractor's insurance carrier is challenging the coverage, we will ask them to forward a coverage explanation within the time set forth under Washington State's statutes and administrative codes with a copy of their applicable policy.

People wrongfully think the city is vicariously liable for the fault (or alleged fault) of the contractor. This is not true. While the city is responsible for its employees in the course/scope of employment, a paid independent contractor bears its own risk and has placed insurance for it. Some exceptions may apply, and in some circumstances the city might be vicariously liable for the contractor's work. However, this is generally not the case.

When asked who is responsible for Mr. Smith's loss and who will pay on the claim, the answer would be that it is up to the contractor's insurance carrier to make a liability decision on the loss since it occurred in a construction area that the contractors were hired by the city to perform the work. There may be good reasons the claim should be denied or paid; that is what the insurers' investigation should reveal. As the city is an additional insured, city staff should cooperate with the contractor's insurer for claim investigation.

Our concern is whether or not the contractor and their insurance carrier have met the claim obligations in the Street Project Contract and accepted our tender of Smith's claim. This allows risk transfer through the contract terms and does not require the member and WCIA to become the insurer for work, decisions or mistakes of non-member employees.