

# Volunteer's ladder injury rung up multiple insurers

by Reed Hardesty

Ms. Jones is a business leader and member of a community service club. The nationwide club is well-organized and dedicated to community service. To serve the city, the club scheduled a work weekend to paint structures at the city park. The club provided the people, the brushes and the ladders. The city provided the paint. The city requested and reported the volunteer worker hours for workers comp coverage as WCIA recommends. City staff told the club's officials which structures to paint, dropped off the paint for the Club to use and did not direct its members how to accomplish the work. The city park department did not have a written agreement with appropriate risk transfer, nor did it require the club to name the city as an additional insured with the club's insurer for the service project.

Ms. Jones worked a volunteer shift and painted a covered picnic shelter. She used a ladder brought by club member, Mr. Garcia. She started at noon when the early shift of club volunteers had left for lunch. She moved the ladder onto the tarp to begin painting the upper sections of the shelter. As she climbed the ladder, the ladder moved on the tarp and she fell. She fractured her lower leg and received a crushed heel requiring surgeries with inserted plates and screws. Her medical bills totaled \$75,000.

Three years after the fall, she hired an attorney and filed a Claim for Damages with the city for \$750,000. She also claimed damages against the service club and Mr. Garcia. The L&I coverage paid all of Ms. Jones medical bills, but due to the severity of the injury she missed a lot of work in her sales position so she limped off to court against the city, the club and Mr. Garcia. All three defendants were insured with different companies.

In some cases, we are able to "tender" or handoff the liability claim against the city to another insurer. In this case, since the city did not have an agreement or additional insured protection, WCIA obtained defense counsel for the city. The club obtained its own attorney and the Garcia's homeowner liability policy obtained its own attorney.

We attempted a summary judgment motion for recreational immunity. The judge questioned how anyone could consider painting recreational, but in fact determined that he would not make a legal ruling on the immunity for the city and would leave it as a fact question for the jury. So off to a jury we would have to go. However, at that point all the attorneys and all the adjusters decided to try and mediate the dispute by getting in a few rooms together.

We argued whether the workers comp law bar to lawsuits is applied to either the city or the club, tarp coefficient of friction, the likelihood of falling in the manner alleged, who told who what and how and the wording of release language printed on tiny parts of ladders. We also argued the value of the injury. In the end, the club's liability insurer paid \$90,000, L&I paid \$75,000 in medical bills and waived any potential recovery action, the Garcia's insurer paid \$25,000, and WCIA paid \$7,500 to Ms. Jones. WCIA also paid \$10,000 in legal fees for the city's defense attorney.

In retrospect, if the city would have had a written agreement requiring the club to indemnify the city and named the city as an additional insured, the city likely would have been defended by

the club's attorney and any settlement would have been under the club's insurance policy. The city greatly helped the end result of settlement by having their volunteers covered under workers comp while volunteering on city premises.

In short, Ms. Jones mostly agreed that the city did not do anything wrong and she was working alone when the accident occurred. But expensive injuries beget creative attorneys that bring all possible options to a few rooms to consider the costs of arguing versus the cost the settle.