



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 4: Friday, April 11, 2014 (10:25 am – 11:25 am)

ISO's 2013 Additional Insured Amendments & Claims Handling Consequences

Faber College sponsored the 2014 Baked Bean Bowl and Parade, which annually takes over the Main Street area of Harleysville running from the campus grounds to Mrs. Wormer Memorial Stadium. Faber's events coordinator, Babs Hanover, hired Otter Construction to design and manage the installation of the reviewing stand, press box and broadcast booth along the parade route. In consideration for its providing free police detail during the parade, Harleysville has requested that Faber leave the construction in place for general municipal purposes.

Otter is regularly engaged by Faber and, in 2010, executed the college's Master Contract Terms as a condition of doing future business with the school. Faber requires Otter to defend and indemnify it for all losses arising out of Otter's work or that of any of Otter's subs. It also requires that Faber be designated as an "additional insured" on Otter's CGL on a primary and non-contributory basis. The limits requirements are \$2MM for BI and \$1MM PD.

Otter subcontracted with Flounder Sound, an audio-visual system provider; Blutonix, an electrician to power the event and broadcast; and Boon's Booms & Rentals, an equipment lessor to supply the hoisting gear to complete the erection and rig the decoration along the route. All of the subs were to have an employee onsite during the parade to lend technical assistance.

Otter's subcontracts on the Baked Bean Bowl project require: (1) defense and indemnity for losses arising out the subcontracted work, even when caused in whole or in part by Otter; (2) "additional insured" status for Otter on each sub's CGL for ongoing and completed operations; (3) GCL limits of \$500K/\$1MM; and (4) incorporation into the subcontract of Otter's duties to Faber. Flounder and Blutonix execute the subcontracts. Boon's does as well, but there is a limitation of liability clause (to the cost of the contract) in an equipment receipt executed by Otter's project manager.

While the parade is underway, the Faber float becomes entangled on low-lying bundled wires, pulling down the wires and several hanging bean kettles onto the float and the reviewing stand. The parade grand marshal, Dean Neidermeyer, is electrocuted on live TV. Three adult spectators are seriously injured. The stand and the nearby town library are consumed by fire. The national network broadcast is interrupted and all commercials are cancelled as the network carries news of the calamity. The game is suspended and the sponsors lose promotional opportunities. Faber ultimately loses the rights to host the bowl as a result.

The investigation indicates that the cable and electrical wires were bundled together and strung overhead to minimize crowd interference. It is clear that Boon's equipment hung the bundle, but it claims it did so at Otter's direction. The subs dispute among themselves who did the bundling in the area of the entanglement.

Several categories of claims quickly emerge:

1. Neidermeyer's estate for wrongful death against Otter.
2. Bodily injury claims against Farber and Otter for the three spectators incurring projected damages of \$800K, \$500K and \$200K.
3. Harleysville's claim against Faber and Otter for PD to the library and the stand it was to own.
4. Faber's claim for PD to the float and loss of bowl revenue against Otter and the subs.
5. Otter's tenders to each of the subs for defense, contractual indemnity and additional insured coverage.

Otter and the subs carried a standard form ISO CGL with these distinctions:

Otter: Limits of \$1MM BI; \$500K PD; & ISO AI Endorsement (2004 Edition, Exhibit A)

Flounder: Limits of \$1MM Occurrence/\$2MM Aggregate; & ISO AI Endorsement (2013 Edition, Exhibit B), with Primary Noncontributory Endorsement (Exhibit C).

Blutonix: Limits of \$2MM single limit & AI Endorsement (Travelers Blanket, Exhibit D)

Boon's: Limits of \$500K BI; \$100K PD; & AI Endorsement (Zurich Blanket, Exhibit E)

What are the probable positions of the carriers and the range of outcomes?