

COMMONWEALTH OF PENNSYLVANIA

INTERNATIONAL SHELTER SYSTEMS, INC.	:	BEFORE THE BOARD OF CLAIMS
	:	
VS.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS	:	DOCKET NO. 1596

OPINION

This matter arises out of a contract between International Shelter Systems, Inc., (hereinafter “ISSI”) and the Commonwealth of Pennsylvania, Department of Corrections, (hereinafter “Department”). Both parties had previously filed for summary judgment, which were denied by this Board. Thereafter, the parties entered into a Joint Stipulation of Facts (hereinafter “JSF”) and have submitted this case to the Board for a decision based upon those stipulations.

At all times relevant hereto, ISSI was a Maryland Corporation with its principal place of business at P.O. Box 565, Cockeysville, Maryland 21030. (JSF, para. 1) The Department of Corrections’ Secretary has an office at 2520 Lisburn Road, Camp Hill, Pennsylvania 17001-0598. (JSF, para. 2)

On January 23, 1989, the Department of Corrections issued a Request for Proposal for a Central Diagnostic Center Modular Office Unit at the State Correctional Institution at Camp Hill, (hereinafter “SCI-Camp Hill). (JSF, para. 3)

On February 16, 1989, in response to the Department’s Request for Proposal, ISSI submitted a proposal concerning the lease of modular office units for the Central Diagnostic Center at SCI-Camp Hill. On June 30, 1989, ISSI entered into a contract (hereinafter “the contract”) with the Department to provide six (6) modular office units to SCI-Camp Hill.

The contract provided that ISSI would supply the Department with six (6) modular office units, (hereinafter “modular units”), which ISSI would place on the grounds of the Camp Hill Institution, at an acceptable location designated by the Department. (JSF, Ex. C, para. 1)

Following approval of the contract, ISSI installed modular units at the SCI-Camp Hill to make up the Central Diagnostic Center. The Department, by its representative, Richard C. Smith, executed an Inspection and Acceptance Certificate for the modular units on August 11, 1989.

Upon execution of the Inspection and Acceptance Certificate, the modular units were placed in the custody of the Department. Shortly thereafter, the Department began occupying the modular units as the Central Diagnostic Center. (JSF, para. 13) Between October 25 and October 27, 1989, inmates at SCI-Camp Hill rioted, resulting in bodily injury to staff and inmates and various property damage. The six modular units were totally destroyed by fire in the course of the riot.

Following destruction of the units on October 25 and 26, 1989, the Department ceased making monthly payments to ISSI for the modular units. (JSF, para. 19) At no time has the Department paid ISSI for the value of the destroyed modular units. (JSF, para. 20) However, ISSI has been fully paid for its loss by Hartford Insurance Company (hereinafter “Hartford”), and Hartford is now seeking reimbursement as the subrogee of ISSI. (JSF, para. 36)

It is stipulated that the damages to the modular units provided by ISSI to the Department totaled \$231,078.66. (JSF, para. 15) A quotation was obtained for the demolition and removal of the damaged units from Furnley H. Frisch & Sons, (hereinafter “Frisch & Sons”) in the amount of \$24,210.00. (JSF, para. 16) ISSI did not retain Frisch & Sons to remove and dispose of the six modular units at SCI-Camp Hill. Rather, ISSI used its own employees and equipment to remove and dispose of the damaged

units. (JSF, para. 17)

ISSI contends that the Department breached two conditions of the contract contained in paragraphs 8 and 12 of the contract.

Paragraph 8 provides:

The Department shall not make, suffer, or permit any unlawful use or handling of said leased equipment. The Department shall not, without International's prior written consent thereto, make or suffer any changes, alterations, or improvements in or to said leased equipment or remove therefrom any parts, accessories, attachments, or other equipment.

Paragraph 12 provides:

At the expiration of this contract, the Department will return all equipment to International in the same condition and state of repair as delivered, ordinary wear and tear expected.

ISSI asserts that the Department breached its contract with ISSI by permitting the destruction of the modular units and not returning them in the same condition as delivered, entitling ISSI to the damages to the units in the amount of \$231,078.66 and to the costs of removal and cleanup in the amount of \$24,210.00, plus statutory interest.

The Department has offered several defenses, however, the defense with the most merit revolves around the fact that ISSI did not name the Department as an additional insured as required under the contract and lease between the parties and as such, neither ISSI nor its subrogee, Hartford, is entitled to recovery. (Request for Proposal, para. H(2); JSF, Ex. A; JSF paras. 5-6, 27-32)

Ellen G. Reather, Vice President of ISSI, was in charge of administrative matters, such as billing, contract preparation and insurance coverage matters. (JSF, para. 26) On May 26, 1989, Mrs.

Reather wrote to Mrs. Linda Morrison, Chief Purchasing Division of the Department. (JSF, paras. 27-28) In her letter to Mrs. Morrison, Mrs. Reather wrote: “We have requested our insurance agency to furnish you with a Certificate of Insurance as called for in Section H of the RFP referred to above, naming the Commonwealth of Pennsylvania as an additional insured.” (JSF, Ex. H)

ISSI’s insurance agent was Cross Keys Insurance Agency, Inc., which, on May 31, 1989, issued to ISSI a Certificate of Insurance for general liability coverage, automobile liability coverage, workers’ compensation and employee’s liability coverage and property coverage. (JSF, paras. 29-32; Ex. I) The Department was not named as an additional insured on the Certificate. (JSF, para. 31)

In the opinion of this Board, the Department’s position is correct and the subrogation claim of Hartford through ISSI must be denied. Although summary judgment was denied by this Board previously, the stipulation of facts were not before the Board and the Board’s opinion, at that time, was that factual matters remained at issue which prevented the issuance of summary judgment. These factual matters have now been resolved by the stipulation between the parties; hence, our decision then and our decision now are not in conflict.

The insurance provision of the RFP required that the Department be named as an additional insured under the insurance policies. (§H(2) of the RFP) Clearly, under the contract documents, the Department was to benefit from the insurance provisions and to be protected by those insurance provisions in the case of a loss. The limits of the property damage insurance were \$500,000.00 for a single occurrence of property damage. (§H(2) of the RFP) Accordingly, the coverage exceeded the damages claimed by ISSI.

ISSI argues that these insurance provisions are only limited to the work performed by the

Claimant's employees. Such work by ISSI's employees is covered by the requirement for Workers' Compensation insurance. (See §H(1) of the RFP) It is nowhere stated in the RFP or the other contract documents that the property damage insurance provision is limited to the installation of the trailers; and no such limitation will be construed by the Board since the provision is clear and unambiguous. See Guttman Oil Company v. Pennsylvania Insurance Guaranty Association, 632 A.2d 1345, 1348 (1993), *appeal denied*, 537 Pa. 663, 644 A.2d 1200 (1994).

It is significant that the insurance policies required under the RFP were to be maintained throughout the term of the lease of the trailers. Contrary to the suggestion of ISSI the insurance provision is not limited to the installation of the trailers, but extends throughout the lease terms. If the insurance provisions were in fact to be so limited, there would be no need for insurance coverage for the entire term of the lease.

ISSI insured the leased property through Hartford. But ISSI failed to name the Department as an additional insured as required under the contract documents and as promised by the ISSI letter to the Department. Although ISSI failed to designate the Department as an additional insured, it is still bound by that provision and by breaching the contract through failing to name the Department as an additional insured, ISSI is liable for the full amount of damages sustained. Borough of Wilkinsburg v. Trumbull - Denton, 390 Pa. Super 580, 568 A.2d 1325, *appeal denied*, 526 Pa. 626, 584 A.2d 310 (1990) ISSI, therefore, can not shift the loss to the Department simply by not naming the Department as an additional insured and thereby avoiding coverage to the Department, as ISSI contends.

Further, the rights of the subrogee (in this case, Hartford) can rise no higher than the rights of the subrogor (ISSI). In other words, Hartford stands in the shoes of ISSI and can not recover damages unless ISSI has a legally cognizable cause of action against the Department. Brinkley v. Pealer, 491 A.2d 894, 898 (Pa. Super. 1985); Hagans v. Constitution State Service Co., 687 A.2d 1145, 1150 (Pa. Super. 1997).

Hartford does not have a legally cognizable cause of action against the Department since ISSI does not have a legally cognizable claim against the Department. Hartford's rights can be no greater than ISSI's. ISSI has no claim against the Department since ISSI breached the contract documents by failing to name the Department as an additional insured. By so breaching the insurance provisions of the RFP, ISSI became the insurer for the Department and is liable to the Department for any insurance loss. Borough of Wilkinsburg v. Trumbull - Denton, supra.

Accordingly, as ISSI is responsible for the claims, no recovery can be made from the Department and the claims of ISSI must be denied.

ORDER

AND NOW, this 20th day of December, 2002, the claims of International Shelter Systems, Inc., are **DENIED** and judgment is entered in favor of the Commonwealth of Pennsylvania, Department of Corrections.

Each party to bear its own costs and attorney fees.

BOARD OF CLAIMS

Opinion Signed

David C. Clipper
Chief Administrative Judge

Louis G. O'Brien, P.E.
Engineer Member

John R. McCarty
Citizen Member