

Are You Prepared?

by Philip Chandler

The following article illustrates how easily important steps and practices can be overlooked in preventing and dealing with fires. The article also offers a series of questions you can ask to gauge how well your organization is prepared to prevent fires and, if necessary, combat them. This article has been adapted from an article that first appeared in *Campus Fire Zone* April 2007.

Consider the following scenario:

12:23 a.m. – A college's public safety department receives an activation signal from a heat detector on the second floor of Vernon Hall, a fully sprinklered, four-story, student residence.

12:24 a.m. – Public safety officers receive a water-flow signal.

12:24 a.m. – The fire department is notified of the alarm, and public safety officers are dispatched to investigate.

12:26 a.m. – Public safety units arrive and are told by evacuating students that the second floor contains smoke. Officers run to the second floor to find water on the hall floor in front of the trash room and moderate smoke. They notify their dispatcher of their findings, and he conveys the same information to the town's 911 dispatch center. The call is re-

broadcast as a confirmed structure fire and additional units are assigned.

12:28 a.m. – Public safety officers open the rated door to the trash room. The rush of air into the room causes fire to erupt in two oversized trash receptacles. Apparently, the fire had been smoldering for a while. The initial combustion had gone undetected because the room contains no smoke detector; the installing contractor, deviating from construction plans, substituted a rate-of-heat-rise detector for the required smoke detector. The heat and smoke forces the officers to retreat; fortunately, they think to close the door.

They are unable to put the fire out with portable extinguishers because the floor contains no extinguishers. The extinguishers had been removed in hopes of curbing vandalism. It was observed at this time that the room contained an active sprinkler head but its spray failed to reach the fire; it was later learned that ducts obstructed the spray.

12:30 a.m. – The first engine company arrives and sends a crew to the fire floor. Wearing self-contained breathing apparatus and carrying a fire extinguisher, the crew locate the trash room, open the door, and darken the fire with the extinguisher.

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From the initial sprinkler activation to the time of system shutdown, a huge volume of water was discharged, causing extensive damage on two floors.

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At the same time, another company attempts to stretch a hose from the stairwell standpipe connection. This company is unable to charge the line, however, because the valve handle had been removed, also to prevent vandalism. The local fire department long ago agreed to this removal and began to carry these handles on their apparatus. However, the company attempting to deliver water to the fire area comes from a neighboring

department and knows nothing of this special arrangement. Likewise, neither the public safety officers who have spare valve handles in their patrol cars nor the host fire department officers are aware of the equipment they possess. They are new in their positions and were never informed of the protocol.

12:35 a.m. – Another company carrying tools and ventilation equipment down a corridor leading to the fire notices a female

student sprawled on the floor of an open dorm room. At the same time, public safety officers arrive at the coed's room after her boyfriend notified them that she was not among the evacuees. Intoxicated and unresponsive, the student is carried from the building. The fire department had not conducted a primary search of the premises, relying on assurances by public safety officials that evacuation was complete.

12:47 a.m. – The maintenance engineer on call arrives on campus. He had been summoned at the first verification of fire. His first job is to shut off the sprinkler system and the fire pump, which is delivering 150psi to the open head. The fire department had been unable to overcome this pressure and stop the sprinkler flow manually. Firefighters were also unable to locate either of the two sprinkler control valves; on-duty public safety officers likewise were unaware of the valves' locations. During the time the sprinkler was activated, it had discharged a huge volume of water, extensively damaging two floors.

Fire investigators are unable to determine the fire's cause. No cigarette butts were found in the refuse, which was carefully examined. The investigation discovered a wall poster with singed corners and grainy security camera footage of someone playing with a lighter in the hallway in the hours leading up to the fire. Two fires had been intentionally set at the school in recent years, and this fire is still under investigation.

Philip Chandler is a long time firefighter and a fulltime government fire marshal working extensively in the college environment. This article was edited and reprinted with permission from Campus FireZone (April 2007) which is published free of charge from CampusFireSafety.com."

Questions to Ask Yourself

At first blush, this incident may seem like nothing more than a glorified wastebasket fire. In fact, the fire generated a \$143,000 bill for smoke and water damage and cost the college for staff overtime and alternative housing.

But the real story is how much worse the consequences *could* have been. In fact, the college was fortunate to have escaped so lightly. Consider the loss of life that could have so easily resulted! A slight variation in any number of variables might have turned this incident into a tragedy.

Fortunately, we can learn much from this, and for that matter, every incident. Accordingly, I propose that you answer the following questions as a mini check-up:

1. Do you have a vigorous plan and construction-review procedures to assure that the appropriate fire safety features are installed properly? (Fire safety features include rated separations and fire-detection or fire-suppression devices.)
2. Are all rooms that contain controls for heating, ventilation, and air-conditioning (HVAC) equipment and all fire detection and suppression equipment clearly labeled for quick access by the fire department?
3. Do you inspect, test, and maintain all fire safety equipment and systems according to accepted standards and required frequency?
4. Are all of your own first responders, be they public safety or maintenance staff, well versed on the safest protocols for dealing with fires and hazardous materials incidents?
5. Do you routinely conduct evacuation drills and evaluate how effectively students and staff evacuate buildings and account for occupants afterwards?
6. Do you aggressively investigate malicious false alarms and tampering with fire detection and suppression equipment and treat all mischievous fire-starting as the crime it truly is—arson?

Answering these questions and addressing any shortcomings will help your organization both minimize the likelihood of fire and effectively deal with it should fire strike.

Questions & Answers

Question:

I am confused by the change of the adjective “unattended” to “unprotected” in the CURIE Property policy, exclusion 2.2m, and have a number of questions about this change:

- If we tow an underwater research probe behind a ship, is the probe deemed to be unprotected?
- If we release the probe underwater, leave it in place for a time, and then recover it, is the probe considered unprotected?
- If we leave a research instrument in the field for some time to record measurements, is the instrument deemed unprotected?
- If the answer to any of these questions is “yes,” then how do we protect the items?

Answer:

In the examples you cite, if an underwater probe is towed, it is considered protected. But if it is left in place for some time, it is considered unprotected and would fall within the exclusion. Similarly, research instruments left in the field unprotected by a structure or fence would be deemed unprotected. You may, however, be able to insure such items through a property floater type policy. Also in some cases, claims pertaining to these types of applications may also fall within the mysterious disappearance exclusion (Perils Excluded 2.2)—exclusion (j).

Question:

In the Property policy, what exactly are “input costs” in respect of animals under clause 4.5 Basis of Valuation and Loss Settlement—(h)?

Answer:

“Input costs” is the term used for research expenses incurred to conduct research projects. As an example, our policy will cover the costs of replacing the original animal but not the time and expense spent on conducting research with or on the animal.

Question:

Would you please confirm how additional insureds work? Our main CURIE liability policy includes a seminary school as a named insured. Am I correct that if the school is a named insured, the clauses on additional insured also apply to their organization? For instance, would the seminary board members be covered as a result of including the seminary as a named insured? I have always thought this coverage extension to apply, but I just want your confirmation of this fact.

Answer:

Yes, your understanding of an additional insured is correct.

Question:

Our university holds an annual convocation event each year on the main campus. Would you please advise if our current insurance policies would cover liability issues associated with setting up and using an inflatable bouncer? This bouncer would be used by the children of graduates attending the convocation event. The equipment would be rented from an outside vendor, set up on university grounds, and supervised by a school representative or volunteer.

Answer:

Yes, this sort of event and its associated activities would be covered by the CURIE CGL policy.

Serving Our Members

We understand that the increasingly broad and complex scope of university operations can present you and your colleagues with many, and sometimes unusual risk and claim-related questions. It's most likely, however, that the CURIE staff, through its dealings with the other 55 CURIE subscribers, have encountered issues like yours. If not, we're highly experienced in finding answers through our network of contacts.

Don't hesitate to call or email us if you have a question. We are here to help you manage your risks and protect your university - and we are always looking for ways to serve you, our valued members, better.

Understanding Construction Management

by Hannelie Stockenstrom

Reproduced from Clark Wilson LLP's Campus Counsel, February 2007

In recent years, higher learning institutions have moved away from the traditional fixed price (or stipulated price) design-bid-build project delivery system in favour of construction management for large or complicated capital projects. An experienced construction manager can add value in design and assist in the development of construction schedules and provide constructability assessments and cost estimates. Trade contracts can be entered into sequentially, with the construction contract divided into smaller packages in order to shorten the overall project time. This "fast tracking" can take advantage of procurement opportunities and goes some way to address availability problems in the marketplace, such as are currently experienced in Western Canada.

However, construction management has also led to misunderstandings, particularly in relation to the standard form construction management agreement most often used in Canada, being the "Canadian Standard Construction Management Contract Form between Owner and Construction Manager CCA No. 5-1988" published by the Canadian Construction Association (the "CCA 5"). The Canadian Construction Association also publishes a companion form of contract entitled "Stipulated Price Contract for Trade Contractors on Construction Management Projects CCA No. 17-1996" which is intended for use by the owner and trade contractors when entering into separate trade contracts.

Construction management differs from traditional project delivery in that another party is added to the historical three-pronged model (owner-consultant-contractor). In its basic form, construction management is a process by which



an additional party (the construction manager) is retained by the owner to provide leadership throughout various stages of the project.

Construction management generally takes one of two forms, each with its own scope of responsibilities and risks. The two models are (a) the construction manager as agent of the owner and (b) the construction manager "at risk". In its basic form, construction management is performed by an independent party as a separate professional service, on a fee-for-service basis. The construction manager will manage separate trade contractors on behalf of the owner and will perform the management and the coordination functions typically carried out by the general contractor. In this model, the construction manager is merely an agent of the owner and does not design or construct the project. Instead, the agency construction manager administers the construction contract through the various phases of the project and the

owner contracts separately with each of the construction manager, design professional and trade contractors. The agency construction manager is generally not responsible for the means or methods of construction and does not guarantee construction cost, time or quality aspects of the work.

On the other hand, the construction manager "at risk" provides advice and construction leadership on a project during the planning and design phases and provides construction leadership, contract management, direction, supervision, coordination and control of the work during the construction and post-construction phases. The owner contracts separately with the design professional and it is the construction professional and it is the construction manager (rather than the owner) who contracts with the trade contractors. Under this model, the construction manager has control (and takes the risk) over the means and methods of construction, the management of the

contractors and the delivery of the project within the owner's time and budget requirements.

The contract between the owner and the construction manager will differ significantly, depending on whether you the construction manager is the owner's agent or is a construction manager "at risk".

The CCA 5 is specifically written for the construction manager as agent and is not really suitable for use under the construction manager "at risk" model. Unfortunately, at present, there is no Canadian standard form of contract available for the construction management "at risk" model. Owners who use construction management on multiple projects usually develop their own custom form of contract which is specifically designed for this form of construction management. Some owners attempt to modify the CCA 5 to suit this "at risk" construction management, but the modifications required are extensive and caution is advised. Owners should seek legal advice when they take this approach. Allowing the construction manager to propose and prepare the form of contract is not advised, as this often puts the owner at a significant disadvantage.

Some of the most misunderstood aspects of the CCA 5 relate to the promises which the construction manager makes to the owner (or stated otherwise, the risks the construction manager assumes), particularly with respect to the project schedule and budget. Article A-2(a) of the CCA 5 provides that the construction manager, along with the owner and the consultant shall "strive" to achieve substantial performance of the project by

a given date. Unlike a general contractor of a construction manager "at risk" the construction manager as agent, does not actually take the risk that the project may not be within time or within budget.

One of the other common misunderstandings relates to the compensation payable to the construction manager. Under the CCA 5, the fee payable to the construction manager is just one of several components of compensation to which the construction manager may be entitled. Articles A-5 (contract fee), A-6 (reimbursable expenses) and A-7 (own forces work) all deal with the compensation payable to the construction manager.

Appendix A to the CCA 5 lists reimbursable expenses which the construction manager is entitled to recover in addition to the contract fee. Some of these items often come as an unwelcome surprise to owners. It is essential that the owner have a clear understanding of the services covered under the contract fee and which items will be additional, reimbursable expenses.

Whatever form of construction management contract is used, it is essential that the contract be finalized and executed by both parties before the construction manager provides any services or before trade contracts are awarded.



Allowing the construction manager to propose and prepare the form of contract is not advised, as this often puts the owner at a significant disadvantage.



First Quarter Claims Highlights

The number of new liability claims remains down as a result of the mild winter, and the severity of new claims appears down as well. One new property claim involves water flowing from a water line for several minutes and is considered a major loss; however, we should have a good chance for subrogation.

The CURIE II claims are slowly winding down. We did have two new CURIE III liability claims reported, one defamation and one slip and fall. The CURIE IV liability program is still looking good.

STATEMENT OF INCOME AND EXPENSES

For the three months ended March 31, 2007

	2007	2006
Written Premium	\$ 19,717,694	\$ 19,754,189
Earned Premium	4,929,423	4,935,647
Less Reinsurance Costs	140,768	412,309
Net Earned Premium	4,788,655	4,523,338
Net Incurred Claims	7,023,585	3,576,859
<i>Net Loss Ratio</i>	146.67%	79.08%
Underwriting Profit (Loss) Before Operating Expenses	(2,234,930)	946,479
Operating Expenses	664,813	595,360
<i>Net Operating Expense Ratio</i>	13.88%	13.16%
<i>Combined Ratio</i>	160.55%	92.24%
Underwriting Profit (Loss)	(2,899,743)	351,119
Income from Investment	659,458	496,456
Other Income	1,500	1,500
Other Comprehensive Income	351,887	0
NET PROFIT (LOSS)	(1,886,898)	849,075



Events to Mark in Your Calendar

RIMS Canada Conference, Halifax, NS

September 16–19, 2007

CURIE University & College Risk Management Conference

Halifax Marriott Harbourfront Hotel, Halifax, NS

September 15 & 16, 2007 (Sat. 9-4; Sun. 9-12)

CONFERENCE PRESENTATIONS

- **CURIE Board Update**
by Nancy Sullivan (CURIE – Chair)
- **Don't Be Scared – Be Prepared**
by Donna Tona of Trauma Ed. Risk Mgmt Services Inc.
- **Integrating Risk Management**
by Ray Coutu of Laurentian University and Nowell Seaman of University of Saskatchewan
- **Defamation – A CURIE Perspective**
by Ian Gold of Cassels Brock
- **Failure to Educate – Indemnity versus Legal**
by Alex Pettingill of Cassels Brock
- **Does Risk Management Really Work?**
by David Beal of OSBIE
- **Claims Update**
by Stewart Roberts of CURIE
- **What You Can Do to Improve the Odds – Every Recommendation Makes a Difference**
by John Breen of CURIE and Greg Gribbon of FM Global
- **Fire Prevention – Is It Really What We Should Be Doing?**
by Tim Vandenbrink of City of Edmonton (Asst. Fire Marshall)
- **Member Roundtable Discussion**
– discuss your questions or your organization's problems with your peers

We will send conference registration forms to subscribers in July. If you would like to attend the conference but do not receive a form, you will be able to download one from our website at www.curie.org by mid July. If you have any questions, please contact Terry Page by phone at 905-336-3366 or by email at tpage@curie.org.



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Fax: (905) 336-3373
Editor: Keith Shakespeare

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Lessons Learned

by Stewart Roberts, CURIE Claims Manager



Below, I share insights into three property losses in which CURIE has been involved in the hope that these lessons will help you avoid similar circumstances.

Scenario 1

A new roof is to be installed on a building that houses physical plant operations including a paint shop. A roofing consultant is hired to oversee the project, including the roofing contractor. While attaching the new roofing membrane around the roof vents, using torches at 1800 degrees Celsius, workers ignite paint fumes and particles, resulting in a fire that causes \$245,000 damage.

The roofing contractor alleges it did not know it was working above a paint shop. The university had never cleaned the paint-fume ducts, allowing paint particles to accumulate. The roofing consultant had no insurance.

Lesson learned:

- The university should have had an inspection and cleaning system in place.
- The university's risk management experts should have reviewed the construction contracts.
- All parties should have better understood the work required, an understanding that would have likely prevented this fire.

Scenario 2

Renovations were completed on a 90-year-old building. One of the upgrades was a sprinkler system. Part of the sprinkler system ran through an uninsulated and unheated false ceiling area. The plans called for the sprinklers to be insulated in this area, but this work was never done. Nine years after the renovations were finished, the pipes froze, causing \$150,000 damage. The contractor is long out of

business, and therefore subrogation is not an option.

Lesson learned:

The university should have inspected all work associated with the renovations. In the end, the school paid, in more ways than one, for work that was never done.

Scenario 3

During a roof-repair job, a heavy rainstorm damages the building, resulting in about \$375,000 damage. CURIE attempts to subrogate and obtains a copy of the contract, which indicates that the contractor is supposed to have its own insurance for the project. During discoveries, the contractor produces a signed contract indicating that the university is to provide insurance for the contractor. As a result, CURIE is unable to subrogate.

Lesson learned:

The university risk management department should have reviewed the construction contracts, and the university should have been aware of those responsible for obtaining insurance. Separate departments within the university did not know what the other was doing.

Although these three losses could have been avoided, at the very least CURIE could have recovered the damages paid on behalf of subscribers.

When you hire contractors for campus work, make sure they are supervised by university personnel. **Remember: CURIE will not insure contractors working on your campus.**