

CONTRACTORS: AVOID UNNECESSARY COSTS IN CASE OF WILDFIRES WITH THE RIGHT INSURANCE COVERAGE

By Peter Pringle

In the Fall 2016 edition of *Truck LoggerBC*, contributor John Drayton brought up a number of important points about contractor liability in the case of a wildfire from a legal point of view. Given the recent spread of wildfires in BC, I thought it was important to contribute to the conversation from an insurance perspective and expand on contractors' risks from wildfires.

There are typically two scenarios that can transfer liability to a contractor during a wildfire. In the first, the contractor has negligently or wilfully started the fire, or has failed to suppress the fire, and is clearly at fault. In the second scenario, the fire originates within the contractor's area of operations but the contractor cannot demonstrate due diligence in following proper operational procedures, as laid out in *Forest Practices Code* and *Wildfire Act*, for example. Even if the contractor does follow procedure, a failure to demonstrate this—such as not maintaining the necessary paperwork—can render them fully or partially responsible.

In either case, if the contractor cannot prove they are not at fault using hard evidence, the cost of fighting the fire can fall on them unless they have the right insurance. It is important for contractors to have insurance that covers: general liability for third-party costs to a) fight a wildfire and b) damages to standing or felled timber; the contractor's own firefighting costs that are not reimbursed by a licensee or government authority; costs incurred by the contractor for downed timber lost in the fire, including lost profit.

General Liability

A general liability (GL) policy will cover contractors for both damage to third-party property, such as standing and downed timber, and expenses incurred by third parties in fighting a fire. The Forest Fire Fighting Expenses endorsement has a sub-limit within the policy that does not increase the general limit. This type of policy will cover the demands of government authorities,

licensees and other private entities related to firefighting costs. This will also cover the scenarios described above, compensating for proven claims and defending against unproven claims. Generally speaking, all contracts, whether they are with governmental authorities or forest companies, will have a requirement for the contractor to secure and evidence general liability coverage before being allowed to begin operations.

Contractor's Own Fire Fighting Costs

While in most wildfire situations, the contractor's firefighting costs will be reimbursed by the government or licensee, the two scenarios above could leave them without a source for reimbursement for their own costs and those of any subcontractors they have engaged to help fight the blaze. Some licensee logging contracts might offer to cover the costs in this situation, though this is typically only triggered once a cost threshold has been met. Historically, \$100,000 was a common benchmark, meaning the contractor was responsible for the first \$100,000 themselves. Insurance coverage for this type of risk exposure is now easily available and can be surprisingly cost-effective, depending on the insurance provider.

Contractor's Interest in Downed Timber

Since the contractor often does not own the timber being cut, they may overlook the need to insure their own unpaid harvesting costs and profit. This can become an issue after a fire where they are designated at fault if the licensee does not agree or is not obligated to pay the contractor for downed timber lost in the fire. Though not as easy to place with some insurers, there is coverage available for such a situation. With this exposure being specific to the forest industry, coverage will only be offered by insurers familiar with logging operations. With the help of the insurance broker, the contractor can determine the

insurable interest in their costs-to-date and profit in order to insure the appropriate amount.

Coverage for losses resulting from wildfires is both available and affordable to contractors—not to mention highly recommended. Scenarios where the contractor is either clearly at fault or cannot prove due diligence can become costly without the proper insurance. Contractors should work with their insurance brokers to review the firefighting, reimbursement and insurance clauses within their logging contracts and determine their risk exposure as well as available insurance options. That way, contractors ensure they have the appropriate coverage in place to help reduce their risk, minimizing their losses and avoiding potential hassle in the future.

TLA Editorial Note: Any insurance coverage is only as good as the contractor's due diligence ensuring all regulations and requirements for prevention and readiness in case of a fire are met. Including having all the required equipment and documentation that goes along with a robust due diligence program. Nobody wants a wildfire and our members work hard to avoid them.▲

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