

Waivers of Subrogation - Roof Replacement Project

Objectives

The objectives of this risk management claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss that occurred during a roof construction project
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

Incident Background

A Connecticut school district hired a contractor to replace a roof on one of their schools. The new roof is a standing seam metal roof, which would be replacing the existing asphalt roof. While the contracted roofing company was using a propane blowtorch to adhere flashing to exterior soffits, combustibles behind the soffit and below the roofing caught fire. The fire caused extensive damage to the school building.

Investigation

- Approximately 13 months prior to the incident, the school district (district) entered into a contract with a roofing construction company (vendor) to complete an approximately \$5 million renovation project.
- A previous incident had occurred approximately 7 months prior to the date of the large loss, which involved a small fire which was caused by the vendor's inappropriate use of a propane blowtorch.
- The incident occurred during the summer when school was out of session.
- While the contracted roofing company was using a propane blowtorch on "hot-installed" flashing material, wood, insulation and other combustible materials caught fire.
 - There is also on the west side of the school an employee parking lot.
- The fire caused substantial damage to the building after heavy smoke and soot were circulated via air vents throughout the entire school and internal sprinkler systems was activated.
- CIRMA Claims responded to the scene immediately after being notified of the loss.
- CIRMA Claims engaged a myriad of leading resources, including roofing construction, forensics, fire cause and origin, and disaster recovery experts, to help gather critical information needed to mitigate further operational interruptions and establish a theory of liability to maximize recoveries through subrogation.
- A review of the contract agreement between the district and the vendor revealed that the school district signed a Waiver of Subrogation, which is an endorsement that prohibits an insurance carrier from recovering the money they paid on a claim from a negligent third-party.

Injury and Damages

Due to the extensive nature of the damage to the school building and also to the contents inside, as well as the Waiver of Subrogation, CIRMA's liability assessment for this incident exceeds **\$20 million**.

Key Recommendations/Action Items

CIRMA Risk Management offers a free value-added service to its members regarding contract reviews. This service provides a legal review of the insurance, and indemnification language with all types of contracts. Recommendations are made based on current risk management risk transfer best practices. As a result, CIRMA Risk Management recommends that each member:

- Consider utilizing the CIRMA contract review service prior to signing and executing third-party agreements;
- Remove/amend "waiver of subrogation" language from agreements prior to signing of any agreement or contract; and,
- Utilize the CIRMA Risk Management Best Practices Guide on Risk Transfer as a reference when creating and drafting third-party agreements.

For more information on this topic, please contact your CIRMA Risk Management Consultant.