

Our Legal Reality

"Insurance Protection in an Era of Increasing Premiums" by Kent J. Pagel

You may recall about one year ago I advised that structural component manufacturers could experience increased property and casualty insurance premiums for the year 2000, and in all likelihood for at least the next few years. Many factors led me to my opinion. For example, the Wall Street Journal had reported that property and casualty insurance (workers' compensation, automobile, general liability and property insurance) companies had grown tired of decreased earnings and continuing financial setbacks. In the past few years, competition among property and casualty insurance companies has fed a continuing decrease in premiums for most companies, yet the amounts paid out in claim costs (settlement payments and defense costs) were regularly exceeding the amounts collected in premiums. As you can imagine, if this trend was left unabated, some insurance companies would be forced to file bankruptcy or receivership, which we have seen. However, the most likely scenario is for insurance companies to increase premiums and/or non-renew less desirable customers (e.g. those with a high frequency of claims, high dollar claims, and/or poor risk management practices).

It's not surprising that the segment of business asked to first bear the brunt of premium increases are small to mid-size companies, those with average annual revenues of less than \$10 million. (Guess what? Most structural component manufacturers fit into this category!) Certainly you cannot argue that, all things being equal, small compared to big means greater risk, but the real reason small to mid-size companies are expected to unequally share in the premium increases is that they simply lack the financial clout that larger companies possess.

When you view this trend as it applies to the structural component manufacturing industry, other factors contribute in a big way to the same result. The continuing spread of construction defect litigation involving residential construction is one such factor. How the structural component manufacturing industry is viewed from a quality perspective, claim frequency and claim severity are also factors. The Wall Street Journal article forecasted a year 2000 price increase at 15 percent, but some are suggesting the structural component manufacturing industry has seen and will continue to see increases that exceed other industries.

Achieving some kind of financial clout was and continues to be a primary impetus for WTCA to seek out an industry endorsed property casualty insurance company. As the structural component industry marches toward \$10 billion in revenues annually, it represents significant financial clout among not only its more apparent suppliers but also to an industry as colossal as the property and casualty insurance industry. Think about the premiums paid by structural component manufacturers each year for worker's compensation, general liability, automobile liability and property insurance policies—the amount is quite staggering with estimates approaching \$60 million annually.

Having an industry endorsed property and casualty insurance partner has proven quite beneficial for WTCA and its members. WTCA has benefited through expense reimbursements, a shared database of claims and an unedited conduit of information coming to it directly from the insurance industry. An endorsed insurance program has enabled WTCA to form and operate a Business Insurance Committee which actively discusses industry insurance related issues, educates WTCA membership on insurance and legal liability related matters, monitors claims history of the industry in general and meets frequently with the WTCA property and casualty insurance company partner to find ways to make the program more beneficial for all concerned.

From a member company's standpoint, an endorsed industry program represents an opportunity to obtain a quote for insurance from a company that will most likely be competitive. Less obvious reasons can include, as it did in WTCA's case, an insurance company that better understands the industry and the risks faced by those in the industry. For example, many insurance companies routinely include the professional liability exclusion endorsement on policies sold to truss manufacturers. However, those insurance companies previously endorsed by WTCA have eliminated this exclusion after learning how this risk can really impact truss manufacturers.

In the last two years we have witnessed one insurance company terminate its relationship with WTCA (citing economic losses on a premium collected vs. claims paid basis). As WTCA has had to terminate its relationship recently with a second endorsed insurance company (for reasons that the insurance company had suffered setbacks with respect to its loss reserve ratio and Best's rating), it has become obvious that our membership must now act even more proactively on many fronts as property and casualty insurance is becoming a much more important issue for structural component manufacturers. Meanwhile your Business Insurance Committee will continue to work monitoring industry insurance and litigation developments and will work on securing a new industry endorsed insurance company as long as the relationship is obviously in the best interest of WTCA and its members.

Remember, it is important for each company to take active steps to protect themselves in today's current insurance environment. This should include more than simply whittling down the premium charge for the next year:

- Learn from your company's history and the industry's history. If you know what type of losses have occurred in the past, future losses can be avoided or controlled. Take time and re-read Bob Bush's article in the [January/February 2000 WOODWORDS](#) titled "[What Types of Accidents Occur in Truss Plants?](#)"
- Re-read or at least browse the manual you received (and the copious notes you certainly kept) at the WTCA sponsored Risk Management and Liability Avoidance Seminar you attended. Better yet, work with your Chapter to organize one for your area—an update will only help you to better manage risk issues and insurance costs.
- Claim history and claims investigation and handling are things that are within the control of the prospective buyer of insurance and are important considerations for the prospective seller of insurance.
- Participate in or contribute to the Product Incident Database that WTCA has developed. Participation is as easy as a mouse click to WTCA's web site (www.woodtruss.com) and filling

out the questionnaire each time your company experiences a Product Incident. The purpose of the Product Incident Data-base is to discover, monitor and evaluate product safety issues that are important to WTCA members. Product Incidents are events causing personal injury or property damage that involve finished trusses. Accidents occurring before or during assembly are not included. Examples of Product Incidents include:

- Your customer sets trusses on a house. Before the house is sheathed, a windstorm blows the trusses down and thereby damages either the structure or personal property.
- Your employee claims he injured his back taking a truss off the line.
- Your driver strikes a parked car with the tail of a truss on the way to the jobsite.
- Your customer's employee steps on a truss, the bottom chord breaks and the employee falls to the ground.
- Your company is named as a defendant in a construction defect lawsuit where your manufactured products are alleged to have caused property damage.

The data gathered by this claim reporting form will be analyzed for prevalent incident types and will be used by WTCA's Product Safety & Loss Control Committee to educate or possibly to develop programs that reduce truss manufacturer loss exposure. The information will remain confidential and will not identify individual companies or incidents. Your help is crucial to the success of this project. We hope that this kind of work will ultimately benefit our industry's image, insurability and integrity.

- Work carefully, yet aggressively with your insurance agent the next time you renew. Insist that your agent seek out only solid companies. Understand and ask questions about an insurance company's rating. Work through the additional insured endorsement issues that you have been reading so much about. Challenge your agent. Do not accept mediocre effort especially in a time of increasing insurance premiums. If your Business Insurance Committee is successful in structuring a partnering arrangement with another casualty insurance company, make sure your agent obtains a quote from this company. It is important for the structural components industry to support those who support the industry.
- Last, but not least, stay abreast of developments on the insurance side with reports, articles and fax news sent from your Management Committee, Business Insurance Committee and Product Safety and Loss Control Committee.

Kent J. Pagel is a senior shareholder of the Houston, Texas firm of Pagel, Davis & Hill, a Professional Corporation. Mr. Pagel serves as the outside general counsel to WTCA and can be reached at 713/951-0160 or kjp@pdhlaw.com.

For more information on Risk Management Seminars conducted by Mr. Pagel, contact Anna L. Stamm at WTCA-National at 608/274-4849.

Copyright © 2001 by Truss Publications, Inc. All rights reserved. For permission to reprint materials from SBC Magazine, call 608/310-6706 or email editor@sbcmag.info.

The mission of Structural Building Components Magazine (SBC) is to increase the knowledge of and to promote the common interests of those engaged in manufacturing and distributing of structural building components to ensure growth and continuity, and to be the information conduit by staying abreast of leading-edge issues. SBC will take a leadership role on behalf of the component industry in disseminating technical and marketplace information, and will maintain advisory committees consisting of the most knowledgeable professionals in the industry. The opinions expressed in SBC are those of the authors and those quoted solely, and are not necessarily the opinions of any of the affiliated associations (SBCC, WTCA, SCDA & STCA).