



## DOWNLOADING WILDFIRE COSTS ONTO THE CONTRACTOR

There can be many causes of a wildfire: a carelessly discarded cigarette; a lightning strike; a machine fire that spreads to the surrounding forest. Sometimes a logger will say, “We had a fire on our block, but we have no idea how it started.”

The logger, at least initially, will be expected to fight that fire, and there will be costs associated with that. The government may take over the firefighting. Once the fire is extinguished, the issue of cost recovery arises. That’s when the provisions of the *Wildfire Act* intertwine with the logging contract and the contractor’s insurance policy. The results can be quite scary.

Government can recover its firefighting costs from anyone who contravenes the *Wildfire Act* or Wildfire Regulation if that contravention results, directly or indirectly, in a wildfire. In addition, it can recover the stumpage value of the standing timber that it loses in a fire and the cost of reforestation. The alleged contravenor has an opportunity to prove due diligence in order to escape liability, but that’s usually a fairly tall order.

Certainly government has the right to directly pursue a contractor for recovery. More likely, however, is government pursuing the licensee for the acts of its contractor.

What happens when the licensee receives a bill from government? The licensee will probably turn to the contractor and say, “Under the terms of our written logging agreement, you are responsible for paying this bill.” The licensee might also add, “We have incurred our own firefighting costs (different from government’s) and we have suffered our own losses in terms of developing the block, and we want you to reimburse us for that as well.”

Responsibility for paying these costs will be found in the written contract. Probably it will be found in two different places in the contract—one place for government and licensee firefight-

ing costs; another place for the licensee’s own losses including government losses passed onto the licensee.

There is no uniformity to these contracts—some are harsher to the contractor than others. At one extreme, the contractor is liable to pay even if the cause of the fire is unknown, provided that it is proved to have happened within 24 hours of the contractor last working on a block, and the fire occurred within 100 metres of that block. As a middle ground, one sees the contractor responsible if he caused the fire, regardless of whether he was negligent or careful, in compliance with the *Wildfire Act* or not. At the other end, one finds the contractor being liable

sible that the contractor will be liable to the licensee on the one hand, but have no insurance coverage on the other.

I have only scratched the surface here. What I have not talked about is the logging contractor’s own firefighting expenses. Sometimes those might get reimbursed by government or by the licensee; sometimes not. One Interior licensee is requiring that a contractor who causes a fire, even accidentally, bear his own firefighting costs and also pay the licensee’s insurance deductible on top of that.

It is possible for a contractor to obtain insurance for his own firefighting costs—called “first party coverage”—but I understand that this insurance is expensive

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only where his negligence caused the fire.

I have had a chance to look at the insurance policies of the three main insurance providers in the province. The bottom line is this: If the contractor was in non-compliance with the *Wildfire Act* or regulation, and if that resulted directly or indirectly in a wildfire, then the insurance will provide coverage for the government’s claims (up to the policy limits, of course). This is regardless of whether government comes directly after the contractor, or if it comes after the licensee who in turn looks to the contractor for reimbursement.

The matter becomes trickier when the licensee comes directly after the contractor for the licensee’s own firefighting costs (including if it hired other contractors to fight a fire), and for its lost development costs and lost profits regarding standing and decked timber. In that case, there may be a disconnect between the contractor’s responsibilities to the licensee under the contract, and the coverage in the insurance policy. In the case of a machine fire spreading to the forest, or a fire of unknown origin, it’s quite pos-

and rarely purchased. So too is insurance over the processed timber in the forest which, if burnt, means that the contractor’s work will not be paid for.

Contractors are advised to work with their lawyers to avoid taking on too much liability under their contracts. They may want to consider a corporate structure that separates operations from holdings, as a further measure of reducing risk. And, contractors ought to be taking their contracts to their insurance agents, to ensure that they have adequate coverage.

Finally, from a proactive point of view, contractors should make sure their firefighting equipment and training is up-to-date. And, from a big picture point of view, they should consider their liabilities above the demands of getting the wood out when the wildfire hazard increases. It may not be worth the risk. ▲

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*John Drayton is a lawyer with Gibraltar Law Group who practises in the areas of forestry and motor transport law.*