

STRUCTURAL BUILDING COMPONENTS MAGAZINE

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Legal Edge

Some Guidelines for Truss Collapse Investigations by Kent J. Pagel

Risk management seminars at your fingertips!

Every year at BCMC, a manufacturers' roundtable discussion is held on Thursday afternoon. The event is well-attended and good discussion always occurs. This year, an issue was raised about the need to be proactive about handling truss collapses on the jobsite. This topic will be covered in a WTCA project on risk management and liability issues facing component manufacturers.

Since it may not be easy to take a full day away from the office to attend a seminar, the goal at WTCA is to reach as many people as possible with the critical information. Therefore, WTCA has decided to work on putting many of the existing risk management and liability avoidance programs and topics that I have presented on in the past online in an updated and modified format. New programs are also being developed. This will be part of what we call Online Risk and Liability Management Best Practices for the Component Manufacturing Industry (ORISK). The program will be comprehensive and should contain useful information.



The ORISK program will include four specialties: Risk Management Techniques, Insurance, Customer Contracts, and Claims Handling. Each specialty will be broken down into four or more individual tracks. The tracks identified within the Risk Management specialty will include:

- Risk 101
- Risk Management Techniques/Best Practices
- Risk Management-Vehicle Liability
- Mold on Lumber and Structural Components

The tracks identified within the Insurance specialty will include:

- Insurance 101
- Broker Selection and Use
- Commercial General Liability Insurance

- Automobile Insurance
- Property Insurance
- Workers' Compensation Insurance

The tracks identified within the Customer Contracts specialty will include:

- Customer Contracts—Bidding and Terms and Conditions of Sale
- Customer Contracts—Successful Negotiation Recommendations
- Customer Contracts—Risk Transfer/Understanding Indemnification and Insurance Requirement Provisions
- Customer Contracts—Scope of Work/Design Responsibilities.

The tracks identified within the Claims Handling specialty will include:

- Claims Handling Best Practices (Parts I and II)
- Truss Collapse Investigations
- Litigation Management

Each track will contain numerous modules which will average ten minutes each. A comprehensive glossary of terms will also be easily accessible for those participating in the online sessions.

While I will continue to present WTCA Risk Management and Liability Avoidance seminars in the future, I am very excited about the possibilities the ORISK program will allow. It will enable so many more wall, truss and component manufacturer employees who have interest in learning about these topics to participate.

At the WTCA 2004 Regional Workshop and Conference held in Las Vegas, I presented a program titled Claims Management and Truss Collapse Investigation. Among other topics, this session tackled the importance of handling truss collapses proactively and establishing guidelines on how to properly conduct truss collapse investigations. As discussed above, this was a key concern brought up at the recent BCMC manufacturers' roundtable held in Charlotte. What follows is a summary of the truss collapse investigation discussion taken from this presentation.

WHY INVESTIGATE TRUSS COLLAPSES?

Construction accidents are high-profile events, especially when there are fatalities involved. With each collapse there is a high probability that a lawsuit will be filed. The minutes and hours immediately following an accident are crucial to the investigation and final allocation of responsibility for the accident. If critical steps are overlooked, wall, truss and component manufacturers and their insurance companies may find their ability to mount a defense against subsequent lawsuits has been compromised.

PURPOSE OF INVESTIGATION

The investigation directs the wall, truss and component manufacturer into a structured process for learning and enables the company to gather factual data to support a successful outcome.

GOAL OF INVESTIGATION

DETERMINE what happened and when it occurred. DETERMINE who was involved. DETERMINE how it happened. DETERMINE why did it happen and how can it be prevented in the future.

INVESTIGATION— FUNDAMENTAL PRINCIPLES

An investigation allows you to document, document, document...You can document where a claimant was at the time of the incident and the condition of where the claimant was working. Photos tell a story to the person who will never see in person what you have seen. DO NOT, however, photograph blood, police, EMS, fire or the claimant with these parties—these photos will later be enlarged with a view of getting sympathy from the jury.

The more you are convinced you have no liability in an incident, the better your investigation should be. Juries like construction claimants! Why: (1) often times the claimant has been a hard worker all his/her life; (2) often times the claimant is a family man/woman; (3) often times the claimant still has children under age 18; and (4) usually the claimant has no other employment training, so their trade career could be over.

TRIAL CONSIDERATIONS

Jury members relate more to the plaintiff than they do to the lawyer the plaintiff hired, the defense lawyer or the corporation defendant. There are two converging factors that favor injured plaintiffs at trial: (1) jury members are naturally sympathetic for the injured and (2) plaintiff's lawyers are skilled at finding a deep pocket to blame.

THE INCIDENT INVESTIGATION PROCESS

Think like a plaintiff's lawyer. You may know your company is not liable, but it's a jury you must convince. Spend less time defending and being right, and spend more time looking for other parties that caused the incident. Step back and think, "if I was the plaintiff's lawyer, what theory of liability would I be creating?"

DEVELOP A TRUSS COLLAPSE & PRODUCT PERFORMANCE COMPLAINT POLICY

A specific policy will help those within a wall, truss and component manufacturer's company who must respond to a truss collapse and will serve as a guideline of what to do and what not to do. The policy can also serve as a helpful checklist. Below I have set forth a policy that contains suggestions that component manufacturers may want to consider adopting. An [Accident Report Checklist](#) that should also be considered when doing an investigation.

Sample Policy Steps Required For All Claims

1. All truss collapses or jobsite claims (if product touches the ground or in the event of any property damage or bodily injury claim on a customer's jobsite) will be defined as a "Claim." All Claims should be immediately reported to your supervisor/responsible general manager. The person reporting and the supervisor/general manager should contact [include list of Company employees and outside professionals/consultants who should be contacted] and should immediately retrieve a copy of the customer contract, any jobsite package provided, and if trusses were involved, all truss design drawings and all truss placement plan diagrams.
2. When you receive the call, get as much information over the phone as possible.
3. Find out when the incident occurred and if there was a personal injury.
4. Determine the weather conditions at the time of the incident.
5. Ascertain whether any blame or cause is being presupposed.
6. If there is property damage only—find out the extent of the property damage.
7. If trusses are involved, determine the specific truss designs involved.
8. Determine who the erection contractor(s) are.
9. Request that the jobsite be left undisturbed—stress the importance of this with your contact and with anyone else at the site that has any kind of control over clean-up. The physical evidence at the site will usually tell the story as to what happened and why. Any investigation will have an infinitely better chance of being productive if the site is left undisturbed.
10. Depending on the severity of the situation—if [Truss Company] is any way implicated or if there is any personal injuries, as the chances are very good there will be legal action—an investigation should be conducted. This is the case even though it may appear that the trusses were not the cause of the accident. Further, if there is a significant economic loss, an investigation should be conducted.
11. In the event of an investigation, the objective is to try to recreate the accident. Start with seeing if the bracing was properly installed. Look at the jobsite to see if the [Truss Company's] Jobsite Package documents are at the jobsite itself and if so, photograph them. Consider interviewing witnesses with the help of an independent engineer, the company's legal counsel, and a company insurance company representative.
12. An investigation enables the cause to more easily be determined. An investigation requires detailed observations and record-keeping. An experienced person needs to be the one responsible for the investigation and should follow a checklist. At times a third party engineer will need to be retained by [Truss Company] and if it is possible to have the person you typically use at the jobsite immediately.

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SBC HOME PAGE

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