

E-News Property



Fires and CSST Spark Subrogation Actions by Insurers—and Coverage Actions by Insureds

Several recent house fires potentially tied to CSST, which stands for corrugated stainless steel tubing, highlight the growth of litigation involving this product as well as insurer subrogation efforts.

This flexible piping for natural and propane gas has been blamed for house fires due to its vulnerability to punctures and gas leaks from indirect lightning strikes. The first class action by homeowners against CSST manufacturers dates back to 2004 and resulted in a class settlement. Now HO/CP insurers (and their insureds) are seeking subrogation from manufacturers while CSST manufacturers are pursuing defense/indemnity coverage from their GL insurers. Whether or not CSST is ultimately implicated in the outbreak of lightning-related fires in the product is increasingly making the checklists used by insurance claim investigators and law firms.

- Subrogation Claims by HO and CP Insurers—Many insurers have filed product liability claims against CSST manufacturers, and in most states where these claims have been brought (Indiana and Virginia, for example) these lawsuits have survived motions to dismiss filed by manufacturers. Recently one Pennsylvania jury found CSST defective and awarded 100% recovery of the subrogated and uninsured losses. See discussion of *Tincher v. Omegaflex* at www.subrogationrecoverylawblog.com, or [click here](#).
- Coverage Actions by CSST Manufacturers—The flip side of the property litigation is declaratory judgment actions filed by CSST manufacturers against their GL insurers. In one Massachusetts case (the only decision we found in LexisNexis), the appellate court found a duty to

defend under a GL policy based on the language of a deductible endorsement. As a result, the insurer was required to reimburse the insured manufacturer for class action defense costs exceeding the deductible amount. *Omega Flex, Inc. v. Pacific Employers Ins. Co.*, 2010 Mass. App. LEXIS 1457, rev. denied, 2011 Mass. LEXIS 109.

More insurer subrogation actions and manufacturer declaratory judgment decisions will emerge in the coming years to shape the legal landscape. For now, insurers have several options available to them now:

- Awareness of Prevalence—for most residential and commercial construction after the early 2000's, insurers should expect to find CSST. The product was in use in the 1990's, but not as prevalent.
- New Construction—Insurers have an opportunity to inquire about appropriate testing and contractor installation. Are contractors following the most current guidelines for product installation? Are they using any newly available alternatives with lower risks? (For GL/BOP insurers with a contractors book of business: the litigation does not target contractors, yet, but any negligent work and/or failure to collect from manufacturers could pull contractors into the fray.)
- Rethinking Credits and Debits—Given the CSST timeline, insurers may want to review their credit/debit schedules for new construction. Usually newer is associated with usage of credit, but perhaps this should be re-evaluated given the loss potential associated with unknown exposure to CSST. Claims coding with specific CSST-oriented loss information can provide valuable assistance in measuring the equitability of credit usage.
- Cause and Origin Investigation—Having a qualified cause and origin investigator on site immediately after a fire is critical to handling the claim properly and the success of future subrogation efforts.
- Subrogation Actions—The *Tincher* result may prompt more subrogation actions and increase the pressure on manufacturers to settle and avoid trials. It is still early in this litigation phase, and active subrogation lawsuits should be monitored for outcomes.

For more details on CSST issues:

<http://www.subrogationrecoverylawblog.com/articles/products-liability/csst-1/>

<http://www.claimsadvisor.com/articles/over-1-million-for-csst-case/print/>

<http://www.nfpa.org/assets/files//PDF/Research/CSST Gas Piping Ph.1 Final Report.pdf>

<http://www.pddocs.com/csst/faq.aspx>

If you would like to discuss CSST issues from a property or liability perspective, please do not hesitate to contact your Gen Re account executive.

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