

Policy Archaeology and Lost Policies

Accurate records of what policies were in force, what they covered or did not cover, when they applied, and who they insured is a matter of sound risk management of information. In the case of *Cardigan Mountain School**, a private school in New Hampshire was sued for events that had occurred during the 1967-1968 school year. The school could not find the insurance policies going back that far, but did find an accounting report that referenced a \$1 million liability policy in 1970 with New Hampshire Insurance Co. A statement by one of the accountants revealed he believed had the school changed carriers between 1968 and 1970, it would have been noted on the audit report. The school's business manager in 1969 also said he thought the school had liability insurance, and that it used A. B. Gile Inc., a local insurance broker. The business manager also said he did not think the school had changed carriers during that period.

The school tendered the lawsuit to New Hampshire Ins. Co. and filed suit in state court seeking "adjudica[tion] and decree ... [that] the existence of, and Cardigan's rights under, any policy issued by N.H. Ins. Co. be upheld." The insurer had the lawsuit moved to federal court and sought dismissal on the basis of failure to state a claim. The district court granted the insurer's motion, concluding that the school's complaint did not plausibly show the existence of a policy. The school appealed, and the First Circuit Court of Appeals reversed and remanded the case for further proceedings, noting that the circumstantial evidence was sufficiently specific to allege that a policy existed.

This case points out the dangers of failing to keep old insurance records, especially for liability coverage written on a date of occurrence basis. Whether a general liability policy in 1967 would have covered the alleged claim is not known without the policy to review, but there may have been statutory defenses to the claim. The push for a "paperless society" has drawbacks when the insured does not keep insurance records and relies on an agent or broker. One hazard is that the agent or broker may go out of business or merge, and records going back more than a few years will be lost. Any computerized data, such as that which might have existed in whatever type of computer the business manager or broker had in 1969, may no longer be readable as the media on which data is stored is constantly changing.

Risk science experts often refer to such situations as "policy archaeology," where, as in the case of *Cardigan Mountain School*, the "possibly insured" entity must rely on the memory of former employees, agents or accountants to try to recall who insured what four or five decades earlier. While storage of bulky policies can be expensive, so can the defense of a lawsuit that might have been covered by

insurance. Keeping track of coverage is especially difficult when mergers, acquisitions and spin-offs are involved.

It's impossible to foresee every potential problem that may arise out of the past to create a current crisis. As schools and churches have discovered, men and women may come forward years after an event alleging some tort, such as sexual abuse. Whether the insurance policies formerly in existence would cover such allegations can only be known if the policy is available for review.

It is precisely because of this type of coverage issue that Crawford & Company®'s Educational Services offers both classroom and KMC on Demand courses that cover the intricacies of insurance coverage, contract and liability issues.

*N.H.: *Cardigan Mountain School v. New Hampshire Ins. Co.*, 787 F.3d 82, (1st Cir., 2015), citing Rules 8(a)(2) and 12 of the *Federal Rules of Civil Procedure*.