

ALERT

## Of Mice and Men

By Marvin Milton, Esq.<sup>1</sup>

Recent floods in Houston, Texas have resulted in major setbacks to many research facilities and their projects—setbacks that could cost millions. Whether these research facilities will be able to obtain adequate recompense and recoup their losses depends entirely on the insurance policies they purchased.

A comprehensive property insurance program is crucial to pharmaceutical companies and non-profit research facilities. Indeed, research and development activities probably are the most important medium for the long-term viability and profitability of pharmaceutical enterprises and the *raison d'être* for many nonprofits.

In order to construct a comprehensive property insurance program covering all of the components involved in research and development activities, a policyholder has to avoid the exclusions and limitations often contained in “off-the-shelf” property forms. Instead, a policyholder should have an insurance program tailored to track the progress of the policyholder’s research. It also is wise to ensure that, in the event of a loss, the insurance coverage can go into “auto reverse” to recapture all of the activities and costs accumulated to bring the data and the research project back on track.

### *How Much Is That Mouse Really Worth*

Laboratory animals often play a very critical role in the ongoing experiments and testing that comprise the research process. Companies, foundations, medical centers and universities that employ laboratory animals in these endeavors should: (1) ensure that their property insurance policies cover laboratory animals, (2) understand how the insurance company will value the loss if research animals are destroyed, and (3) be aware of the risks of loss covered by the policy. Generally, scientists and personnel at the research facility are the best source for identifying the risks to which the animals are exposed and the values at stake.

Under certain standard property insurance forms, insurance companies could contend that the destruction of laboratory animals is not covered. Animals could be excluded from the property covered in certain standard property insurance forms unless they are “stock” - inventory for sale, say, in a pet store. So, if using a standard property insurance form, a policyholder should consider deleting any language that could limit coverage for the destruction of laboratory animals. Further, the “all risk” insurance form also could limit coverage for animals to certain specified perils (i.e. fire, lightning, explosion, windstorm, etc.), and even if the policyholder’s loss is the result of a covered peril, insurance companies seek to limit coverage only if the animals are killed or their destruction is “made necessary.”

Some insurance companies have developed specific policy forms aimed at covering medical technology companies and providing for research and development restoration expenses. These policy forms usually eliminate

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the exclusion for laboratory animals in the common property form but the insurance companies still require that the animals be killed and, then strangely enough, value the animals at the cost to replace them prior to any testing.

Another important consideration is whether there is insurance coverage for power failures or other utility failures which can impact the controlled environment often necessary to the research effort. In an all risk policy form, there is an exclusion which insurance companies assert bars coverage for the failure of power or other utility service if the failure occurs away from the insured premises. Therefore, if a controlled environment is essential to the research effort, consider purchasing an endorsement to ensure coverage for that risk.

In addition to coverage for laboratory animals, policyholders engaged in research also should ensure that their insurance policies provide coverage for valuable papers and other data. The medium for record keeping and analysis are valuable papers, computer logs and data storage, all formulated on electronic data processing equipment. Careful analysis should be undertaken of the potential exposure resulting from the loss of the documents and other data media because, as you might suspect, insurance companies assert that the usual limit for destruction of valuable papers and electronic media under the standard property form is only \$2,500. Supplemental coverage thus should be explored. Typically, this can be achieved by coordinating a custom crafted property form with an electronic data processing ("EDP") form to ensure coverage for valuable papers and research activities. It is the EDP form which will assist the policyholder in recapturing the lost experiments and data.

In sum, it is vital that entities involved in research construct a comprehensive multi-year insurance program—with adequate policy limits—that is designed to cover research and development costs. The important players in the construction of such an insurance program and "catastrophe" plan are: (1) the research team itself, (2) a very knowledgeable insurance advisor and, (3) perhaps, an insurance coverage attorney to review the final insurance policies to ensure that all the bases have been covered and that there are no mutually inconsistent terms and conditions. ■

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