

# Insurance Buyers' News



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Liability

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## Website Accessibility Lawsuits Increasing

A whole subspecialty of law practice is emerging, focusing on website accessibility. That's bad news for businesses that haven't ensured their websites are accessible to people with disabilities.

**T**itle III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in the "activities of places of public accommodations," or businesses that are generally open to the public. Some attorneys and advocates for the disabled have argued—successfully—that websites are "public accommodations" that should be made accessible to individuals with disabilities.

Violations of Title III can bring a maximum civil penalty of \$75,000 for a first violation. For a subsequent violation, the maximum increases to \$150,000.

Seyfarth Shaw, LLP, a law firm with offices throughout the U.S., reported that 106 federal website accessibility lawsuits have been filed between the beginning of 2015 and September 21, 2016. Just four industries—retail, restaurants, hospitality and



## This Just In

**L**loyd's of...Europe? Brexit, the Exit of Great Britain from the European Union, could have profound effects on the world's most famous insurance market.

John Nelson, chairman of Lloyd's of London, has warned that Lloyd's might move some of its business to continental Europe due to Brexit. According to The Independent (September 5, 2016), "...Lloyd's operations may start leaving London before Brexit negotiations are concluded unless the Government can provide 'clarity' about the UK's future relationship with the EU."

As members of the EU, Lloyd's members had the ability to "passport," or exercise their right to "... carry on permitted activities in another EU member state, on the

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entertainment—have accounted for 95 percent of the cases filed. Retailers have been named in 63 percent of all cases, restaurants in 16 percent, hospitality businesses in 9 percent and entertainment businesses in 7 percent. All other private industries, from academia to dating services to medicine, each account for 2 percent or fewer of all cases.

The message is clear: businesses in high-risk industries should make creating accessible websites a priority. Other industries should also look at their websites, because they are not immune to lawsuit.

Worth noting: For its research, Seyfarth Shaw looked at Title III cases only. Employment discrimination falls under Title I of the ADA; lawsuits against employers using online applications that are inaccessible would not count in this tally. Organizations should also look at any online job applications or screenings to ensure that they are accessible to people with disabilities.

### What Makes a Website Accessible?

An accessible website should offer alternatives to images and audio that allow people with vision and hearing impairments to have access to any information or services you offer on your website. That includes having the ability to “read” text or make orders online.

When evaluating your organization’s websites, look for the following problem areas:

**1 Problem:** Images without text equivalents. Blind people, those with low vision, and people with other disabilities that

affect reading abilities often use screen readers and refreshable Braille displays, which cannot interpret images.

**Solution:** Add a text equivalent to every image.

**2 Problem:** Documents not posted in an accessible format. Some formats, such as PDFs, do not have text equivalents.

**Solution:** Post a text equivalent.

**3 Problem:** Specifying colors and font sizes. Web designers often specify certain colors or fonts for aesthetic reasons. However, some people might not be able to see certain colors, and others with low vision might need to change a font to make it more readable.

**Solution:** Users need to be able to manipulate color and font settings in their web browsers and operating systems in order to make pages readable.

**4 Problem:** Websites increasingly make use of video. However, video might not be accessible to those with vision problems or hearing problems.

**Solution:** Provide an audio transcript for video for the vision-impaired, and subtitles for hearing-impaired. Or provide a text transcript that’s translatable by accessibility programs.

For a quick and easy way to evaluate whether your website might pose problems, you can run it through the WAVE Web Accessibility Evaluation Tool, located at <http://wave.webaim.org>. Simply type in your website’s URL and the tool will point out potential problems.

### *This Just In*

**basis of its home state authorisation.” Without passporting or other agreements that allow insurance business to be transacted across borders, Lloyd’s will seek to move some operations to continental Europe.**

**Founded 325 years ago, Lloyd’s of London is not an insurance company, but an insurance market where members, grouped in syndicates, underwrite risks. It is known for its ability to take on unusual or high risks.**

**B**ack in 2014, the U.S. Department of Justice, which enforces the ADA, announced that it was developing regulations that would include online and website activity under Title II, which applies to local and state government agencies. Risk managers and other experts in the private sector have been keeping an eye on their development. They know those regulations could provide a model for regulations affecting private entities.

Although the DOJ’s original deadline was March of 2015, it pushed back implementation and again extended the public comment period. The latest public comment period ended on October 2016, signaling that regulations could be coming soon. ■

If your website needs changes, an accessibility expert can help. And if you want to ensure your organization has the right insurance coverage to protect itself from discrimination claims, please contact us. ■

# Specialty Liability Coverages

In our last issue, we discussed the liability insurance coverages that every business should have. In this issue, we'll discuss some specialized coverages that are "nice to have" for some businesses, and "must haves" for others.

**Professional Liability and Errors and Omissions (E&O) Coverage:** People in certain professions can cause harm to others—whether physical, emotional or financial—through negligent practice of their profession. These people need either professional liability or errors and omissions coverage to protect themselves from the financial risk of lawsuits.

Historically, insurance for professionals such as lawyers was called professional liability; policies for quasi-professionals were labeled E&O. However, insurance companies now tend to use the terms interchangeably.

Both PL and E&O policies cover individuals against liability incurred as a result of errors and omissions in performing professional services for clients or customers. Both cover economic losses suffered by third parties but not property damage—which is typically covered under your general liability policy. Most PL and E&O policies also exclude coverage for bodily injury—with a key exception being professional liability/medical malpractice for doctors.

You don't have to consider yourself a "professional" to need coverage for negligent acts. If you give advice and recommendations, if you create programs or products for

your customers or if you provide a service, you need liability protection. In addition to lawyers, doctors and accountants, other professionals who need protection include:

- ✱ Real estate agents
- ✱ Data processors
- ✱ Pest control services
- ✱ Appraisers
- ✱ Architects and engineers
- ✱ And more!

**Pollution Liability Insurance:** Also known as environmental liability, pollution liability claims can occur when an organization's activities involve a release of pollutants that negatively affects the property of another party or causes bodily injury. Pollution liability can arise from many different sources and are not limited to particular industries. It can stem from on- and off-site conditions, waste disposal and transportation exposures, merger and acquisition activities, historical and current operations and storage tank releases, to name but a few.

Insurers have developed pollution liability policies to cover a wide variety of circumstances. Two that you're most likely to come across are **pollution legal liability insurance** and **asbestos containment coverage**.

**Pollution legal liability insurance** covers claims from unknown pollution conditions at specific locations. Generally, these policies include claims for bodily injury, property damage and cleanup costs. They'll often



cover business interruption and transportation claims, but not the costs of ongoing cleanup or existing, known contamination. **Asbestos containment coverage** covers building owners if a release of asbestos occurs. Policies cover sudden/accidental release of asbestos, which results in bodily injury or property damage. Landlords and owners of older buildings might consider this coverage.

**Data Coverages:** Companies that store or use financial, personal identifying or medical information of individuals can be liable if that information is stolen, lost or hacked. **Data breach liability insurance** (or **cyber liability insurance**) offers protection when a data breach occurs. Policies vary, but most will help cover the cost of identifying and correcting the source of the breach, the cost of notifying affected customers and the cost of offering credit monitoring and identity theft services.

Companies that store or process information for other organizations can also buy **data processing insurance** to cover themselves from the liability costs associated with the loss or damage to another organization's data.

**Property Liability:** When you rent another party's property or when you have another party's property in your custody, care or control, you can become liable if that property is lost, damaged or stolen. **Rental insurance** covers property you rent from someone else. It includes both property coverage to protect the equipment from damage and liability insurance

to protect the renter from legal claims based on the use of the equipment. Specialized rental insurance often costs less than similar coverage offered under your business owners policy or other standard commercial property policies.

When you take care, custody or control of another person or business's property, you become a "bailee." Most property policies specifically exclude coverage for others' property if it becomes lost, damaged or stolen while in your care. Businesses that take control of other people's property, such as during repairs, servicing or transport, need **bailee insurance** to protect themselves from this financial risk.

Although bailee coverage was originally used to cover the bailee's liability exposure, it is often expanded to provide a no-fault coverage to protect the customer's property against any damage, whether or not there is negligence and subsequent liability. Your coverage should have high enough limits to cover the total value of other people's property that may be in your control at any one time.

Many liability insurance policies will cover the cost of defending a lawsuit, in addition to covering the costs of any claims or settlements. We recommend that all businesses review their operations and insurance program annually to ensure they have the coverages they need. To set an appointment, please contact us. ■

## Protect Your Cargo!

Earlier this year, the FBI released its second annual compilation of cargo theft data. During 2014, 547 incidents of cargo theft were reported to law enforcement. The stolen cargo had a value of more than \$32.5 million.

The FBI statistics include only reported thefts. The National Cargo Security Council (NCSC) pegs the total cost of cargo theft much higher. It estimates cargo loss costs at \$50 billion annually, in direct and indirect expenses. That's a lot of cost to pass on to your customers.

Cargo theft has many victims, from employees (i.e., drivers, warehouse workers) who can be hurt during an armed hijacking or robbery...to retailers who lose merchandise...to consumers who pay as much as 20 percent more to make up for cargo theft...to state and local governments who lose sales tax revenue...and even to insurance companies, manufacturers, and shipping companies.

What's being stolen? Any product being shipped is potentially a target, but cigarettes, pharmaceuticals, and especially computer/electronic components are high-value favorites being re-sold on the black market.

In the past few years, FBI investigations have revealed more and more sophisticated operations with well-organized hierarchies. The typical "criminal enterprise" has a leader who runs a regional or national operation. Beneath him are cells of thieves and brokers, or fences, who un-



load the stolen goods on the black market. “Lumpers” physically move the goods, along with drivers. And there’s usually a specialist who is expert at foiling the anti-theft locks on truck trailers.

In fact, the FBI calls cargo theft a “gateway crime.” Cargo theft investigations often “turn into a case involving organized crime, public corruption, health care fraud, insurance fraud, drug trafficking, money laundering, or possibly even terrorism. Criminal groups use the illegal proceeds they gain from stealing cargo to fund their criminal operations. And the fear is that terrorists could use their proceeds to launch

attacks or fund training.”

Not all cargo thefts are outside jobs, however. In some thefts, individuals directly involved in the shipment will participate. An insider can provide thieves with information regarding the content of shipments, or a driver might collude with thieves by allowing access to the trailer in exchange for a cash payment.

Technology, such as GPS systems and RFID (radio frequency ID) tracking can help shippers keep track of their shipments. Still, some old-fashioned preparedness and common sense procedures can help. These include:

- 1 Warehouse security.** Do you screen all warehouse applicants to weed out those most likely to participate in theft? Is your facility secure? Do you train employees to release cargo only to authorized drivers or carriers?
- 2 Logistics.** Do you know where your shipment will go? Will it be combined with other cargo en route? Work with your shipper so you know where high-value shipments are at all times. Share logistics information only on a need-to-know basis.
- 3 Driver security.** If you use your own drivers, do you train them to keep trucks locked and park only in well-lit areas? Do you require one member of the driving team to remain with the truck at all times?
- 4 Tracking.** Whether you use your own drivers or work with a common carrier, monitor all shipments—if any are late, begin investigation immediately.
- 5 Reporting.** If your cargo is missing, report it to the proper authorities immediately. Cargo thieves move stolen goods quickly, so the faster you act, the faster law enforcement can respond.
- 6 Insurance.** Make sure you have the right type and amount of coverage for your cargo.

For more information on preventing cargo theft and insuring your goods while in transit, please contact us. ■

# Winter Prep Check-up

It's that time of year when Mother Nature begins to get feisty—sending a late-season hurricane or an early blizzard or torrential rainfall your way. Don't wait for her to remind you that now is the time to make sure your business is ready for winter.

## Your Building

Is your building ready for winter weather? Have you:

- ✱ Inspected the roof and completed routine maintenance?
- ✱ Made sure the eaves are clear and the water will flow away from the building and public walkways?
- ✱ Cleaned the storm drains and openings on grates?
- ✱ Inspected windows for potential leaks?

## Business Continuity

If your office has to close several days during and after a storm, having a plan that allows crucial business activities to continue can prevent serious loss of income and/or customers. You should:

- ✱ Identify critical operations such as payroll, financial reporting and shipping.
- ✱ Identify employees responsible for critical functions.
- ✱ Develop a plan for having these employees work off-site, if needed.
- ✱ Test your plan in advance.

Maintain productivity by identifying employees who can work from home while tending to sick children or their own contagious ailments. Discuss the options with them in advance and develop a plan that includes:

- ✱ An understanding as to what functions can be done at home.
- ✱ An understanding of when an employee may work at home.
- ✱ Providing the necessary equipment.

For more information on preparing for winter weather, please contact us. ■



# Insurance Buyers' News



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