Insurance Buyers' News

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Avoiding Winter Storm Damage

As you read this article, winter probably seems far away. But winter storms—including hurricanes, windstorms, snow and ice—are coming soon. Is your business prepared?

Winter storms rank third in terms of the dollar value of damage they cause, second only to hurricanes and tornadoes. A January 2011 analysis by Munich Re, a leading reinsurer, found that winter storms caused about $25 billion in insured losses between 1990 and 2009…or about $1.25 billion per year. However, the winter of 2010 brought more winter storms to more populous areas of the Northeast and Midwest, causing about $2.6 billion in insured losses, the highest figure since 2003.

Are You Prepared?

Snow, ice, sleet: Organizations operating in areas that have freezing temperatures have specific insurance needs. The basic "named perils" property policy covers your buildings and contents from damage or loss caused by specific perils, or causes of loss, named in the policy. These include fire, lightning, explosion, windstorm or hail, smoke, and more. However, these policies do not include coverage for falling objects; weight of snow, ice or sleet; water damage or collapse.

The most common types of prop-

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This Just In

The cyber-risk insurance market is booming, largely due to increased concerns over data breaches. A recent issue of the *Betterly Report,* an insurance trade magazine, reported that exact information is hard to come by, but estimates gross written premium for 2010 at $800 million, up from $600 million in 2009…a 33 percent increase. As the author notes, "We suspect that the market will continue to grow, as protection against privacy breaches and the growing importance of post-breach response (also known as remediation) services drives the market."

Many more insurers are entering this market. Competition and the general softness of the commercial insurance market make

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erty damage that severe winter weather causes are roof damage or collapse due to snow, ice or sleet, and water damage from burst pipes or "ice dams." Ice dams occur when water fails to flow properly through gutters, allowing it to seep into a building, damaging ceilings and walls. The resulting water damage would not be covered by a basic "named perils" policy, nor would any of these other types of damage.

To remedy that property insurance gap, businesses can buy one of these types of property policies:

- a broad form property policy, which covers the basic named perils, and adds coverage for falling objects; weight of snow, ice or sleet; water damage (from certain causes) or collapse (from certain causes).
- an "all-risks" policy. This type of policy covers your business from property damage or loss due to all causes, unless specifically excluded by the policy. Typical exclusions include nuclear hazard, war and military action, earth movement, flood, wear and tear, and more.
- a business owner's policy (BOP). The standard BOP offers a package of coverages the typical small to mid-sized business needs. These include property coverage, business income coverage, general liability coverage, and coverage for autos you borrow or rent for business purposes.

High hurricane-risk areas: In certain high-risk coastal areas of Southern states (including Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Texas), the standard business property policy excludes windstorm coverage. In these areas, business owners might have to obtain their windstorm coverage from a state-sponsored insurance pool, while a private insurer writes the rest of their property coverage. We can help you determine the amount of coverage you need.

Preventive Measures

Although you might have the right coverage for freezes, snow, ice or windstorm damage, it does not eliminate the obligation to maintain your property. Before winter starts, take the opportunity to evaluate your roof. Large, flat roofs, those with heavy insulation and those in shady areas have highest risk of dangerous snow and ice build-up, as do roofs of varying levels, which can create drifts. Skylights and vents can also cause structural weaknesses and leaks. Poorly insulated areas of roofs can also cause problems by allowing heat to escape, causing snow to melt and refreeze.

Snow causes the most problems when it accumulates over time. The actual weight of the snow doesn't depend on its depth, but rather the amount of water that it contains. Water content varies because of the difference in snow crystal structure. In general, snow that falls at warmer temperatures will be denser; snow also packs down over time and becomes denser. Zurich Re estimated that one foot of dry snow weighs about three pounds per square foot, while wet snow can weigh as much as 21 pounds per square foot. If snow accumulations occur in your area, plan now on how you will safely remove them.

Likewise, in high-wind areas, roofs, windows and doors allow can allow wind to enter and are your building's most vulnerable areas. Checking structures on a regular basis to ensure they are in proper repair and meet current codes can help you prevent major damage.

You will also want to ensure your business has enough business income coverage to weather a loss in income due to damage from snow, ice, windstorm or other covered cause. For more information on preparing your business for winter's challenges, please contact us.

This Just In

cyber-risk insurance more affordable. Some smaller insurers surveyed by the *Betterly Report* indicated plans to reduce rates by 5-10 percent, while larger ones said they would keep rates flat or possibly reduce them by 5 percent.

For more information on this important coverage, please see the article on P. 4 or contact us.

New Technology, New Exposures

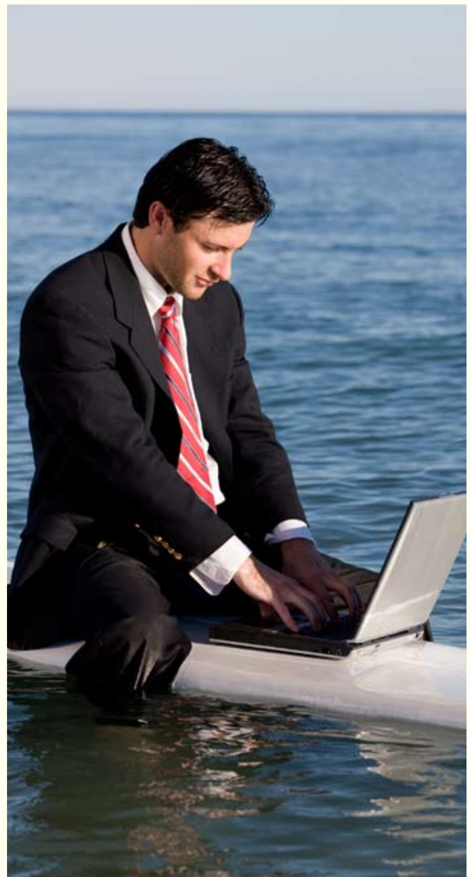
A recent Mother Jones survey of employed email users found that 22 percent are expected to respond to work email when they're not at work. Fifty percent check work email on the weekends; 46 percent check work email on sick days and 34 percent check work email while on vacation.

The portability and connectivity of smart phones are changing the way we work. At the same time, they are also opening employers up to new exposures. Read on for more information.

Overtime

The Fair Labor Standards Act (FLSA) governs minimum wage and overtime. It entitles employees to whom the law applies to receive overtime compensation for "time spent working" beyond the 40-hour workweek.

Both the minimum wage and overtime provisions of FLSA generally do not apply to workers in executive, administrative, professional positions and outside sales employees who are paid on a salary basis. Requiring these "exempt" employees to check their smart phones would not subject employers to overtime claims. However, in several recent cases, non-exempt employees have sued their employers for unpaid overtime compensation because the employer required them to check communications on their smart phone when not on duty. The cases revolve around the question of whether the act of checking communications constitutes compensable work.



As phone records are easily accessible, employees who use them off hours can provide solid evidence for their overtime claims. To avoid claims for unpaid overtime, employers can limit use of company cell phones to exempt employees only, or limit their use by non-exempt employees to work hours only.

The U.S. Department of Labor has launched a timesheet application for smart phones to allow employees to track their work hours and wages. Users can add comments related to their work hours; view a summary of work hours in a daily, weekly and monthly format; and email the summary of work hours and gross pay as an attachment. The free app is currently compatible with the iPhone and iPod Touch. The Labor Department will explore updates for other smart phone platforms, such as Android and BlackBerry, and other pay features. Both the app and the calendar can be downloaded from the Wage and Hour Division's home Web page at http://www.dol.gov/whd.

Facebook Posts

A visit to the website of the National Labor Relations Board (NLRB) turns up information on several recent complaints from workers who have been fired for Facebook

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posts in which they complained about work conditions.

Section 7 of the National Labor Relations Act (NLRA) protects "concerted activity" among employees. The NLRA generally protects employees' rights to discuss the terms and conditions of their employment, including wages and working hours, with co-workers and others. In one recent complaint, the NLRB cited the company's "overly-broad rules" restricting employees' speech. In its settlement agreement, the NLRB had the company agree to revise its rules to ensure that they did not improperly restrict employees from discussing their wages, hours and working conditions with co-workers and others while not at work, and agree that it would not discipline or discharge employees for engaging in such discussions.

The same principles would apply to tweets or any form of online communication. If you are not sure whether your company policies on online communications or social media will violate your employees' rights, please contact an employment attorney.

Ownership Questions

In some organizations, discussions of who "owns" corporate social media have centered on which department controls the company's social media content—should it be marketing, PR or customer service? While a consistent message is important, these organizations might be overlooking a potentially bigger problem.

When your employees participate in LinkedIn, Facebook, Twitter and blogs on behalf of the corporation, who owns the rights to their contacts and content…the employee or employer? Although it's not an employment practices liability problem, those potentially valuable contacts and content could become points of contention when the worker leaves your employ.

Due to the personal nature of some of these social media, traditional noncompete agreements and standards for intellectual property ownership might not apply. No case law exists at this time; however, setting rules at the beginning can help you avoid disputes, litigation and bad publicity.

In her site SocialMediaLawNews.com, attorney Julie Gottlieb says that if a dispute arises, *"First a court will look to a pre-existing agreement bestowing ownership.* [Emphasis added.] In the absence of such an agreement, generally a court will examine the facts to determine whether the employee's social media participation was sponsored or encouraged by the employer, and whether the employee used the employer's resources to create or maintain the social media account. While it is likely that a court will find the employer owns any contacts or content created or utilized during or as a result of employment, in most cases employers cannot claim to own contacts or content cultivated prior to employment."

For more information on protecting your firm's intellectual property, please contact us.

Weather-Related Risks: A Quick Guide for Risk Managers

As populations shift to more vulnerable coastal and wildland interface regions, the effects of severe weather effects become more catastrophic, in terms of lives and property lost.

According to risk management experts, business organizations must update their planning to reflect new risks in four main areas:

1 **Floods, Fires and Hurricanes.** On the most basic level, changing weather patterns are redefining the risks that businesses face from floods, fires and hurricanes. "Extremes of drought and flood will become more common," says Mark Bove, senior research meteorologist in the Catastrophe Risk Management unit of Munich RE. Bove predicts an increase in levee failures and warns that it will soon become necessary to redefine the 100- and 200-year flood events that govern whether lenders require flood insurance and other flood protection measures. Prudent risk managers will take weather volatility into

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account when assessing their flood insurance limits and would do well to err on the side of caution, he says.

Fire risks, especially in the West, are also increasing. Bove's analysis of data years shows that a $1 billion fire loss should be expected every five years. Prior to the devastating 2007 fires in Southern California, which caused more than $2 billion of damage, the insurance industry expected a $1 billion fire loss every 10 years.

In the Atlantic, changing weather and population patterns could cause more frequent and more damaging hurricanes on the East and Gulf Coasts of the U.S.

2 **Coverage Questions.** Changes in weather patterns can affect numerous insurance lines. Property coverage is obviously at the top of the list, but changes in precipitation and temperature will also affect crop insurance, health and life insurance, business income coverage, liability insurance and directors' and officers' liability (D&O) insurance.

"More insurance companies will have to make payments they never would have predicted because of climate change," says Kevin Haroff, a partner in the Environmental and Climate Change Practice Group at the law firm Sonnenschein, Nath and Rosenthal. His advice: Reassess insurance assumptions. Uncertainty over changing weather patterns makes risk more volatile. Are you retaining too much risk?

3 **Legal Liability.** Businesses also face the prospect of increasing legal liability and regulatory changes caused by climate change. Companies whose activities emit greenhouse gases could face lawsuits and huge damages in a rapidly changing legal climate. Additionally, companies may face lawsuits that try to hold them responsible for the permanent loss of ecological assets due to climate change.

Corporate executives who fail to mitigate their company's environmental impacts may face exposures in their directors' and officers' (D&O) liability and errors and omissions (E&O) coverage. Regulatory changes could also force changes in production methods. Companies must also weigh heavy risks to their reputation and goodwill if they fail to take action to curb pollution.

4 **Market Changes.** Weather changes can affect businesses in ways far beyond risk of fire, flood or snow. Will hotter, drier, wetter or more volatile weather affect demand for your products? Sanford Kingsley, a partner in the Environmental and Climate Change Practice Group at Sonnenschein, Nath and Rosenthal, estimates that fewer than half of the companies on the S&P 500 count climate change exposures among their disclosures. Failure to ask these types of questions could do more than just blindside your organization to new market conditions. It might expose company officers to lawsuits for failing to adequately plan.

The insurance industry is trying to cope with the threat of increased weather-related claims through the development of new policies, including special property policies for "green" buildings and pay-as-you-drive auto insurance.

For more information on these and other changing risks, or for a review of your current insurance program, please contact us.

Time to Buy Cyber Insurance?

In recent months, Sony, Citibank, Twitter and other high-profile organizations have become victims to hackers who stole their customers' private data, spurring interest in cyber-insurance.

One of the most common reasons smaller businesses fail to buy cyber-insurance is that they think they are too small for hackers to bother. However, as larger companies do more to secure their technology systems, less-secure small businesses are becoming easier targets for cybercriminals.

The Federal Communications Commission (FCC) says that 74 percent of small and medium businesses report being affected by cyber attacks in the past 12 months. The average cost of these attacks for business, per incident, was $188,242.

Small businesses often struggle to protect confidential data, with 42 percent of small and medium businesses surveyed reporting the loss of confidential or private data in the past 12 months and 40 percent experiencing direct financial costs as a result. Small businesses often do not back up their data, with 47 percent reporting that they never back up their data.

Taking these steps can reduce your risk of hacker attacks. However, standard business property and liability policies do not cover data losses. To ensure you have coverage when you want it, you need a specialized cyber-insurance policy. Look for a policy that provides coverage for both remediation and fines and penalties. For more information on these nonstandard policies, please contact us. And for more suggestions on securing your networks, please see the FCC's website at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0516/DOC-306595A1.pdf.

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