

Insurance Buyers' News



Springfield

PO Box 4207, Springfield, MO 65808
Phone: 800-422-5275
417-887-3550 • Fax: 417-887-3252

Rolla

PO Box 1258, Rolla, MO 65402-1258
Phone: 800-364-2212
573-364-8888 • Fax: 573-341-2257

West Plains

PO Box 964, West Plains, MO 65775
Phone: 800-400-3896
417-256-6162 • Fax: 417-256-6165



Property Insurance

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Care, Custody and Control: When You Need to Insure Another's Property

If the first rule of insurance is to make certain that your property is adequately covered, the second rule should be to ensure that the property of others is also properly protected.

This might seem obvious for companies like couriers or warehousing specialists, which routinely take responsibility for property belonging to other entities with the implied or implicit commitment of taking care of it. But the onus of protecting unowned property can affect a much wider range of companies. From parking garages to auto repair shops, from dry cleaners to computer repair centers, many businesses face exposure for property they don't



This Just In

The April explosion of a fertilizer plant in West, Texas killed 15 people and destroyed a school, a nursing home and many homes, and caused serious damage to the town's sewer system, roads and several hundred homes. The town's mayor estimates it will cost the town \$57 million to repair roads and other damaged municipal property. Total property damage costs could reach \$100 million.

Several insurers have already filed negligence claims against Adair Grain, which owns the plant, for reimbursement of claims they have paid to their policyholders for damage due to the blast. Adair Grain, which did an estimated \$4 million a year in business, had only \$1 million in

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actually own.

Companies can also be held liable for damage to property they rent, or for the property of employees that is stored or used on the premises. Problems can also arise in a case where ownership of property is split between partners but only one of the partners is named on the policy.

Insurance coverage

If a customer's property was damaged while in your care, most service businesses would want to provide full reimbursement to retain customer goodwill. However, general liability coverage and business owners policies specifically exclude coverage for property in the policyholder's "care, custody and control." Even when an insured cause, such as fire, damages or destroys your customer's property, standard commercial property policies typically provide only minimal coverage. Most pay only a minimal amount per loss or only the actual cash value of the lost or damaged property, which may be a lot less than your cost of replacing the goods.

Some umbrella policies provide unowned property coverage, but only after the insured has reached the "self-insured retention" (the "deductible" under a commercial policy), which is usually \$10,000 or more. Some businesses, such as parking garages, try to cover their risks contractually, by having customers agree to "hold harmless" the business owner with waivers or liability releases. However, such waivers need to be carefully worded in

order to be enforceable. Many businesses at particular risk for such losses, such as warehousing firms or self-storage facilities, insist on watertight waivers and also take added precautions like limiting the value of goods that customers can place in their care and offering each the option of customer storage insurance.

Businesses that frequently handle others' property need specialized insurance coverage. Insurers offer many specialized coverages to protect property you hold in custody for others:

- ✱ Bailee's customer insurance and warehouse operators insurance can protect your company from loss or damage to a customer's property while it is in your care, custody or control, regardless of fault or negligence.
- ✱ An auto dealer, parking garage or repair operation can purchase equivalent coverage known as garage keeper's legal liability insurance.
- ✱ Specialized insurance exists for specific businesses. Some examples include "block" policies for jewelers, fur dealers, equipment dealers, camera dealers and musical instrument dealers; there are also floaters for laundries and dry cleaners.
- ✱ Contractors (and sometimes manufacturers, processors and service firms) may purchase a broad form property damage endorsement for their commercial general liability policy, which replaces

This Just In

liability coverage.

The state of Texas did not require the firm to carry liability insurance for its fertilizer operations. The incident points out the importance of having a risk professional review your coverages on a regular basis.



- the "care, custody or control" exclusion. It does, however, exclude coverage for property damage to the contractor's work and property "held by the insured for sale or entrusted to the insured for storage or safekeeping."
- ✱ You can purchase a limited liability policy, which covers only losses that you're legally liable for. You may also buy broader coverage that will pay regardless of your legal liability.

For more information, please contact us. ■

More than Just Boilers: Equipment Breakdown Insurance

If you've been in business a while, you might have heard the phrase "boiler and machinery insurance." Today's boiler and machinery policies cover much more than boilers and machinery, hence the name change. Read on to learn more about this valuable coverage.

Insurers introduced boiler and machinery coverage in the mid-1800s to cover valuable steam-powered machinery from explosion or breakdown, and to cover the equipment's owner from liability for resulting property damage or bodily injury. Today, few businesses use steam-powered machinery for business operations, but some still use steam-powered equipment for generating heat or power. Many states require these boilers to be inspected annually. If your boilers fall into this category, you may find equipment breakdown coverage a bargain, as coverage includes an inspection by the insurer along with protection from loss due to property damage or bodily injury. If you are relying on a governmental inspection, you may end up paying more and not have the insurance protection.

To prevent business shutdowns or slowdowns, an organization might want to cover other kinds of valuable equipment from mechanical breakdown. Today's equipment breakdown insurance can cover these types of equipment, besides boilers:

- 1 Equipment designed to operate under internal pressure or vacuum
- 2 Equipment designed to generate, transmit or use energy
- 3 Communications equipment and computers
- 4 Equipment owned by a utility and used to provide service to an insured's location.

Don't think you need this coverage? Consider the following examples of claims from Hartford Steam Boiler, an insurer that specializes in boiler and machinery insurance and equipment breakdown insurance:



- 1 Owners of an office building had to spend nearly \$1.6 million to restore power to tenants—including an accounting firm on tax-season deadlines—after electrical arcing destroyed three electrical panels, leaving the building without power.
- 2 A medical clinic had to discard more than \$21,000 worth of drugs when they froze after a controller on its refrigerator malfunctioned.
- 3 A printer spent more than \$136,000 to repair a high-speed press after a bolt came loose and jammed the cylinder and gears.

Insurers typically write equipment breakdown coverage under a stand-alone policy; however, some will include the coverage under highly protected risks (HPR) policies or in business package policies.

Typically, equipment breakdown insurance includes the following coverages:

- 1 Damage to “covered property” at the location named in the policy
- 2 Expediting expenses, to cover the costs needed to get insured equipment operational as fast as possible, such as expedited shipping and making temporary repairs.
- 3 Business income and extra expense. Similar to coverage you should have under your property or business owners policy, many equipment breakdown policies will cover income lost due to the slowdown or stoppage caused by breakdown of the insured equipment. Extra expense coverage reimburses the insured for extra charges you incur to keep your business running while the equipment is not functioning, such as outsourcing or renting equipment. If your policy only lists extra expense coverage, it does not cover lost business income.
- 4 Utility interruption, which extends the policy’s business income coverage to losses or spoilage caused by interruption of any utility service to the insured’s premises, rather than just losses or spoilage caused by a breakdown of equipment at the insured premises.

5 Newly acquired premises, or premises unnamed in the policy, for the number of days shown in the policy’s declaration page. The coverage only applies if equipment at the new location is of the same type covered by the policy.

6. Errors and omissions, which covers the insured for unintentional errors or omissions in describing or naming the insured property or location, and errors that cause cancellation of a covered premises.

7 Contingent business income and extra expense, which apply business income and extra expense coverage to breakdowns of equipment at a named “contingent location” not owned or operated by the insured. It can also include coverages to meet special needs, such as spoilage coverage, “brand and label” coverage, hazardous substance cleanup, and more.

Equipment breakdown policies are designed to cover your equipment from mechanical failure only, so they typically exclude damage from earth movement, flood, nuclear hazard, windstorm or hail. They also exclude “causes of loss” typically covered by other property policies, such as aircraft, vehicles, freezing, lightning and vandalism. Many other exclusions apply; however, you can modify many of these by adding an endorsement to your policy.

Equipment breakdown coverage is highly specialized and should be handled by an experienced broker. For information on equipment breakdown coverage, please contact us. ■

Employee Privacy

From video surveillance to keystroke recorders, technology makes it easier than ever for employers to monitor what their employees are doing. But where do employers’ surveillance rights end and employees’ rights to privacy begin?



Video Surveillance

In 2007, only 7 percent of companies surveyed by the American Management Association used video surveillance to track select employees’ on-the-job performance. Almost half (48 percent) used video surveillance to counter theft, vandalism and sabotage, which might or might not include employees.

No federal law prohibits video monitoring of the workplace, even if employees do not know or consent to monitoring. Only two states, Connecticut and Delaware, require employers to disclose monitoring to employees. Elsewhere, employees generally have no privacy rights in “public spaces.” However, in areas where they have a “reasonable expectation of privacy,” such as an enclosed office,

rest room or locker room, courts have generally ruled in favor of employees' privacy rights.

If your video equipment records sound as well as images, wiretapping and eavesdropping laws might apply. Federal law and the majority of states permit recording of phone calls and other electronic communications with the consent of at least one party. Twelve states (California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington) require all parties to a conversation to consent to being recorded. In every state, employers should disclose that employees might be subject to audio and video recording while on company property. For further advice, please contact an employment attorney.

GPS Tracking

An AMA/ePolicy Institute survey from 2005 found that 5 percent of employers used GPS technology to monitor employee cell phones, 8 percent used it to track company vehicles, and 8 percent used it to monitor employee ID or smartcards. No federal laws address GPS tracking of employees. However, courts could find "...the use of GPS to monitor employees could meet the necessary legal standards for invasion of privacy," even within the workplace, according to a National Workrights Foundation report. The report further cautions, "...[Collecting] information regarding employee activities during breaks and their activity in sensitive areas such as rest rooms might be actionable. Outside the traditional employment setting and dur-

ing hours traditionally regarded as personal, monitoring using GPS technology raises even stronger privacy concerns."

To avoid violating employees' privacy, employers using GPS technology should inform their employees which devices have GPS technology, what information the company will gather and when, and how the information will be used. Most GPS-equipped devices allow users to turn off tracking. If your employees can use GPS-equipped phones or vehicles for personal purposes, you can instruct them how to turn off tracking features when off duty.

Computers, Internet and Email

Software programs with names like IAmBigBrother, SpyTech and Activity Monitor can let you monitor your employees' computer use without their knowledge. They can show you employees' screens in real time, track Internet sites visited, monitor keystrokes to track productivity and show contents of email and IM messages—all without employees knowing. But is it legal?

Although the Electronic Communications Privacy Act of 1986 (ECPA) generally prohibits the interception of any wire, oral or electronic communication, it creates a specific exception for employers. Employers can intercept employees' electronic communications if they have a "legitimate business purpose" for doing so. The ECPA also permits employers to intercept employees' communications if they have employees' express permission.

Courts have traditionally treated company computers, and anything on them, as company property—even when employees were

using personal email accounts on company computers. However, several recent cases have come down in favor of granting employees more privacy rights over their emails.

For this reason, any company that plans to monitor employees' e-mail or online activities should include an e-mail and Internet privacy statement in its employee handbooks and require employees to sign a document acknowledging receipt of the policy.

Telephone Monitoring

The Omnibus Crime Control and Safe Streets Act prohibits employers from eavesdropping on or wiretapping telephone calls, with two major exceptions. The employer can listen in on conversations "in the ordinary course of business," such as for customer service, and "where employees have been notified expressly that their telephone conversations will be monitored."

If your company will monitor employees' telephone calls, you need to notify them in writing and obtain their written consent.

However, even with consent, the ABA Family Law Guide says that employers' rights to monitor employees' conversations are not absolute: "Some courts have indicated... that once the private nature of a telephone conversation is determined, any continued eavesdropping would not be in the ordinary course of business and may subject the employer to liability. An employer violating the law can be sued for money damages."

Property Searches

Although the U.S. Constitution prohibits unreasonable search and seizure, once in

the workplace, the employers' rights to protect their property usually trump employees' privacy rights. As with video monitoring, however, employers should tread carefully before searching any area where an employee might have a "reasonable expectation of privacy." These include his/her personal possessions (such as handbags and backpacks), personal workspace and lockers.

If you suspect an employee might have prohibited items, such as illegal drugs or firearms,

at work, contact an employment attorney before conducting a search. And to protect your company from potential lawsuits, make sure your employee handbook contains a notice that the company retains the right to search company property, including employee desks and lockers, at any time and without warning.

Liability Protections

Although your commercial liability policy protects you from claims alleging invasion of

privacy, it excludes claims brought by employees. To protect your company from the high cost of employee lawsuits, you need employment practices liability insurance (EPLI). You can buy coverage either through standalone policies or as an add-on to your business owners package. To discuss the type of coverage that best meets your needs, as well as suggestions on avoiding employee lawsuits, please contact us. ■

Reputation: How to Protect a Priceless Asset

Many events can damage an organization's reputation: a financial scandal, a highly publicized discrimination case, a product malfunction that causes injury, and more. Many reputational risks involve product liability or professional liability. Any organization with a product liability or professional liability should have insurance to cover these exposures.

Specialized crisis containment or brand protection insurance can provide another layer of protection. These policies provide coverage over and above your "traditional" liability coverages to help you recuperate quickly from a reputational failure. For example, crisis containment insurance will reimburse you for the fees and costs of expert consultants needed to respond to one of the many crises specified in the policy. You can often buy endorsements, or policy additions, that add crisis management coverage to your product liability and recall policy.

Unfortunately, no insurance policy can restore a corporation's stock to its preloss levels after a highly publicized crisis. A speedy and appropriate response can often prevent a small crisis from becoming a larger one. The hotel industry is a good example of pre-

paredness. In a well-run hotel, every on-duty manager can access a binder with response guidelines for adverse events.

To develop your crisis management plan, analyze your risk exposures and identify actions to manage them. A thorough analysis will require the input of various departments and possibly outside experts. For example, your company's legal department or legal counsel—what vulnerabilities and risk exposures do they see? What risk factors does the company include in public disclosures? What are other potential sources of reputational risk?

In addition to securing insurance coverages, your insurance broker can offer loss prevention suggestions and strategies. If necessary, he or she might recommend an outside risk manager with a particular area of expertise.

A public relations firm that specializes in crisis management can help your firm create crisis communication plans for various scenarios. Having well-considered responses ready will give you one less thing to worry about when an emergency occurs. For more information on protecting your firm's reputation, please contact us. ■

