Insurance Buyers' News

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How to Protect Your Business from Crime

Theft is one of the biggest reasons businesses often struggle. Consider these recent findings:

- The University of Florida National Retail Security Survey estimates total retail losses of $44 billion every year, with 30-40 percent of those losses walking straight out the door.
- In a survey conducted by Kessler International, 95 percent of employees admitted to stealing from their employer.
- According to a recent study conducted by the Association of Certified Fraud Examiners (ACFE), 5 percent of all revenues are lost annually as a result of fraud.

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How's Your Reputation?

According to the latest Edelman's trust and credibility survey, as reported in the *Harvard Business Review*, in today's world there is a "staggering lack of confidence in leadership: 71% of survey respondents said government officials are not at all or somewhat credible, and 63% said the same about CEOs. The credibility of CEOs fell by 12 points this year, to 37% globally."

We are living in an era of backlash against authority that has been borne mainly by government and the media, but business is no longer above the fray. Today reputation management is critical to businesses that want to protect their credibility and

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Depending on the nature, size and location of your business, your company may be vulnerable to various types of crime — from burglary to employee theft to fraud.

In addition to purchasing specialized crime (or "fidelity") insurance, you will want to consider taking steps that prevent crimes from happening.

Preventing theft by Outsiders

Taking precautions can deter criminals from targeting your business for burglary. Consider installing and maintaining:

- **Strong locks and doors –** External and security doors should have deadbolts and steel frames.
- **Suitable lighting –** Bright internal and external lights can deter would-be burglars. It's especially important to provide strong lighting near doors and windows.
- **Alarm system –** This might include sensors at doors, windows and other places of entry, as well as motion detectors. Determine local regulations concerning alarms and options for a system tied to a monitoring service.

If you're starting a business or relocating, seek out a property that already has theft-prevention features in place. In addition — especially if your business is located in a high-crime area or you keep highly valuable property on your premises — you may want to consider additional protections, such as:

- Barred windows
- Burglar-resistant glass
- Security cameras
- Private security patrols

Burglary and theft are crimes against property, but robbery involves taking property from a person by force or threat. Train employees how to respond to robberies, and minimize losses by limiting how much cash is easily accessible.

Preventing Insider Crimes

Insider crimes committed by employees can be highly damaging to a business. As many as 20 percent of business failures may be a result of employee dishonesty, including theft, according to the American Management Association. The Association of Certified Fraud Examiners (ACFE) estimates that businesses annually lose on average 6 percent of their revenues due to employee crime. You can help prevent insider crimes by taking the following steps:

- **Increase opportunities to uncover employee theft –** Implement tight accounting controls that include frequent audits and take steps to ensure employees are aware of these practices. In addition, establish a policy that enables employees to report thefts and other crimes committed by co-workers without fear of exposure or reprisal.
- **Model and reward positive behavior –**

This Just In

brand. According to Christina Villena of The Hanover Insurance Group, businesses should assess their vulnerability to reputational risk by asking these questions:

Does the company deliver on its promised reputation? Companies spend billions of dollars each year on marketing and branding. Follow through and delivering the promised reputation to stakeholders is critical in maintaining trust.

Have external beliefs and expectations changed? External expectations should influence internal practices. An ongoing assessment of internal policies should lead to important adjustments to an institution's risk management procedures.

How efficient is internal coordination? Working in silos can lead to inefficiencies, poor performance, more risks and inadequate response to crises. Set compliance expectations with more than written policies and emails. Guide employees at all levels toward truly understanding pertinent laws and regulations and required actions.

Emphasize the values of your business — and practice those values in how you treat customers and employees. Establish performance standards, reward loyalty and acknowledge hard work.

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Increasing your Protection with Commercial Crime Insurance

Your commercial property insurance — either as an endorsement or as a component of a package policy — may provide some coverage against robbery and burglary. Crime insurance also covers two important types of property excluded by standard commercial insurance: money and securities — including destruction or disappearance as well as theft.

Standard commercial property insurance also does not cover a range of business crimes, such as fraud or embezzlement. To extend your coverage against business or "white collar" crimes, you might want to consider purchasing crime insurance. This specialized insurance includes coverage for losses resulting from:

- Employee theft
- Forgery and counterfeiting
- Embezzlement
- Computer fraud
- Wire transfer fraud

For help evaluating your business's vulnerability to theft and related losses and how you can best protect yourself, please contact us.

Thanks to the Insurance Information Institute

Why Did I Get a "Reservation of Rights" Letter?

Your organization has just been sued, and you've notified your liability insurer. Then you receive a reservation of rights letter. Here's what it means and what to do.

Practical Risk Management defines a reservation of rights as "an insurer's notification to an insured that coverage for a claim may not apply. This allows for an investigation by the insurer without waiving its right to later deny coverage."

When the insurer sends you a reservation of rights letter, it is telling you that it has doubts whether your policy covers some or all of the claims. In a liability lawsuit, the plaintiff often makes several claims. The policy might cover some and exclude others. When a claim is first filed, the insurer might not know whether coverage applies with the facts at hand.

When you buy a liability policy, your insurer agrees to pay for your legal defense costs in addition to any damages you might be legally obliged to pay. Most states recognize this "duty to defend" as fairly broad under a commercial general liability policy. If there is a possibility that coverage might apply, the insurer must provide your legal defense.

When an insurer receives a claim that might be covered only partially by its policy or not at all, it can do one of the following:

1. **Refuse the duty to defend.** If the insurer does this and the court later finds that coverage applied, the insurer must reimburse your defense costs, along with settlement costs over which it had no control.
2. **Investigate the claim and begin your legal defense.** Insurers like to avoid this due to the principle of estoppel, which bars an individual

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from "denying or alleging a certain fact…because of that individual's previous conduct, allegation, or denial" to the detriment of another. (*Black's Law Dictionary*) In other words, if your insurer begins investigating or defending your claim, this could lead you to assume it will cover your claim.

3 **File a declaratory action,** in which the insurer asks the court to determine whether it is obligated to defend the claim. An insurer will seldom do this when it first receives notice of a claim.

4 **Send the insured, by certified mail, a reservation of rights letter and** proceed with its investigation. This allows the insurer to gather more facts before deciding whether to deny coverage, while preserving its right to do so. Thus, your insurer might defend your liability claim but later deny indemnification (or paying settlements or judgments) if its defense is unsuccessful. Different rules may apply, depending on location. The liability policy also either explicitly or implicitly obligates you to cooperate with the insurer in its conduct of your defense. This allows the insurer to direct your legal defense, including giving it the right to settle. But investigations can also give it facts needed to deny you coverage. For these reasons, a reservation of rights letter indicates a conflict between you and your insurer.

If you receive a reservation of rights letter, you will want to protect your coverage rights by doing the following:

1 Read the reservation of rights letter and the policy to which it applies carefully.

2 Respond to your insurer, saying that you disagree. The experts with the John Liner Review recommend asking the insurer to commit to coverage before it begins its investigation.

3 Arrange for your own counsel.

Some reservation of rights letters will state the insurer reserves the right to recoup defense costs if the insurer does not owe a defense. Depending on the facts of the case and the jurisdiction, you could indeed be obligated to reimburse your insurer for defense costs if it was later determined coverage did not apply.

In a straightforward claim, you have no cause to worry. A reputable insurer will provide a quality defense. It's the gray areas, where coverage might or might not apply, that can cause conflicts. For this reason, we recommend thoroughly reviewing your liability coverage on a regular basis. A review can point out gaps in coverage, outdated forms and language, and other problems. For more information, please contact us.

Who Needs Product Liability Insurance?

If you manufacture, sell or distribute any kind of product, you probably need some kind of protection from product liability claims.

What Does Product Liability Insurance Cover?

Product liability insurance protects the manufacturer, distributor or seller of a product from legal liability resulting from a defective condition that caused personal injury or damage associated with the use of the product. It is designed to protect your business from legal and court costs.

The kinds of costs incurred in defending a product liability claim can be extensive. They include defense, litigation and medical cost containment. In addition, there can be expenditures for surveillance, litigation management as well as fees for appraisers, private investigators, hearing representatives and fraud investigators.

Even if it is questionable whether insurance coverage applies in some cases, there can be considerable attorney legal fees owing to a duty to defend. Defense costs as a percentage of the total claim are relatively high in product liability insurance, reflecting the high cost of defending certain types of lawsuits, such as medical injury cases and class actions against pharmaceutical companies. In 2017, in addition to paying out $940 million in product liability damages, insurers spent $648 million in defense costs, equivalent to 68.9 percent of the losses.

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A related insurance, product recall insurance, is designed to cover the costs associated with recalls, and is available from some insurers.

What Kinds of Businesses Need Product Liability Insurance?

Any small business that produces and sells a product should have this type of coverage, including:

- Bakeries
- Clothing stores
- Florists
- Restaurants
- Gift shops
- Wholesalers
- Specialty food stores
- Coffee shops
- Pet stores
- Print and copy shops

Keep in mind that product liability claims are not only a risk for business-to-consumer operations, but also business-to-business operations. If you produce a product that you sell to other business owners, you still need product liability insurance. Some of these businesses would include:

- Software developers
- Website creators/designers
- Raw material suppliers
- Equipment suppliers

Do I need Product Liability Insurance?

Travelers Insurance 2015 Business Risk Index showed that legal liability, including for incidents involving products, was the fourth-highest rated worry for business leaders in the United States, down from No. 3 a year earlier. Of 1,210 business leaders surveyed, 56 percent indicated they worry about it somewhat or a great deal.

Even if the products you manufacture, sell or distribute appear entirely safe, there's always the potential for something to go wrong. Accidents happen. Claims of personal injury or property damage arising from product use (or product failure) can be expensive. Even if you're not at fault, you may still incur considerable legal costs while defending yourself.

Most lawsuits are settled out of court. Of those that are tried and proceed to verdict, Jury Verdict Research data show that in 2013 the median, or midpoint, plaintiff award in personal injury cases was $68,218, down 9 percent from $75,000 in 2012; in California in 2018 the median was $114,305.

Stringent quality control and other risk management procedures are first and best defenses against product liability concerns, but insurance is an important component of a sound strategy

If you have a general liability policy, product liability insurance is covered in conjunction with liability for work that has been completed. This kind of coverage, which is included in bodily injury and property damage liability, is a combined piece of protection known as products-completed operations ability. Typically, when an insurance company issues a general liability policy to a business, it has taken into account its products liability exposure and is providing the products liability coverage deemed appropriate. However, depending on the nature of the products you make, sell or distribute, you may need more extensive products liability coverage.

Please contact us if you would like more information about products liability insurance and your business.

What is Environmental Liability Insurance?

Standard business general liability (GL) policies provide little coverage for pollution damage, including toxic spills like the one in West Virginia in 2014. Today most companies that store or handle potentially toxic materials purchase a separate environmental liability policy. These policies cover the exposure that the GL policy excludes.

Property owners purchase environmental impairment liability insurance. It covers property loss and liability arising from pollution-related damages for sites that have been inspected and found uncontaminated. It is usually written on a claims-made basis so policies pay only claims presented during the term of the policy or within a specified time frame after the policy expires. It limits liability insurers' exposure to unknown future liabilities.

In general, coverage includes statutory clean-up requirements and bodily injury and property damage third-party claims and legal expenses resulting from pollution or contamination incidents. The coverage kicks in both for incidents that are "sudden and accidental" and "gradual." Coverage also exists for business interruption losses.

Several other types of environmental liability insurance exist:

- Environmental consultants errors and omissions policies cover consultants who advise third parties about environmental conditions.
- Environmental contractor policies cover operations that a remediation contractor performs.

- Environmental testing laboratory coverage addresses the liability of firms that analyze hazardous materials in the soil, ground or air.

In addition, there are policies that protect lenders and real estate agents if they handle properties that later turn out to be contaminated.

Please contact us if you think your business may need environmental liability insurance.