

# Insurance Buyers' News

Headquarters:

**Marrs Maddocks & Associates  
Insurance Services, Inc.**  
1903 Wright Place, Suite 280  
Carlsbad, CA 92008



Branch Office:

2525 Camino del Rio South,  
Suite 270  
San Diego, CA 92108

Phone: 760-804-0402 • Fax: 760-804-0942 • [inquiries@mmain.com](mailto:inquiries@mmain.com)



Liability

July/August 2008

Volume 20 • Number 4

## Premises, Premises. Are You Adequately Covered?

Google the term “premises liability” and you’ll find page after page of plaintiffs’ lawyers eager to make businesses pay for accidents on their premises. Reducing this risk exposure is easier and less expensive than you might expect.



### Who Needs Premises Liability Coverage?

Every business needs premises liability coverage, whether it rents, leases or owns the premises. Even a home office needs coverage, since homeowners insurance generally excludes business-related exposures. Landlords must buy li-

ability coverage to ensure coverage for claims unrelated to the tenant’s operations, and in case the tenant is not adequately insured.

Most standard commercial liability policies have a limit of \$2 million per year and \$1 million per occurrence and come with little or no deductible, says Derek Ross, vice president of the Los Angeles-

based brokerage CM Meiers Company. If you have exposures greater than this, you can cover them with an umbrella policy.

### How Much Does It Cost?

Prices vary hugely according to the general risk of the sector and your company’s specific loss experience. But prices for most liability policies are at historic lows due to the ongoing soft market in the insurance industry.

“The market’s so soft right now, you can get low premium and low deductibles,” says Ross.

Your best strategy for keeping premiums low is to have a good loss record and run a safe business. Rates go up based on the frequency and severity of loss events. “Frequency is worse than

## This Just In

In a recent survey, 44 percent of employers reported using social networking sites like Facebook and MySpace to check out job candidates, while 39 percent have looked up a current employee. Should you?

Employment law experts caution that using this information could open a company to discrimination lawsuits. Although information online is public, “liability starts to come into play when people are making hiring decisions based on that information without coming back and talking to the applicant,” Sue Murphy, manager of the National Human Resources Assn., told *Business Insurance* magazine.

Other experts interviewed for the article (March 10, 2008) were also cautious. In addition to information on factors such as age and race, which federal law prohibits employers from using as the basis of a hiring decision, these sites can also yield information on an applicant’s sexual orientation, political activities and other after-hours activities, such as smoking, which may also be protected by state law.



# Business Income: Make the Worksheet Work for You

An estimated 70 percent of companies that undergo a major loss eventually go out of business because they failed to plan for the disaster. Proper planning includes completing a business income/extra expense worksheet. This worksheet can help you get all the funds you're entitled to after a disaster—here's how.



**I**nsurers started insisting on business income/extra expense worksheets after the terrorist attacks of 9/11, when they were hit with more than \$11 billion in claims for business income losses. Completing a worksheet may seem like a hassle, but you need one for your company's contingency planning and to estimate your recovery costs.

## What's covered?

Business property policies usually include business income and extra expense coverage, which reimburses you for income lost when an insured property loss causes a slowdown or shutdown of your business. The extra expense portion of the coverage will reimburse you for any extra expenses you incur to get your business up and running again after an insured loss, such as

renting space if a fire damages your usual premises.

## Why You Need the Worksheet

Most insurers put a relatively low cap on claims and will exceed it only if you can justify your expenses by the detailed business income and extra expense worksheet filled out during the application process. These forms are primarily underwriting tools. In the event of a covered loss, the insurer will use your actual lost income and extra expense figures.

To calculate your income, use the formula: net sales minus costs of goods and services. This will give a figure that's accurate to within 3 to 4 percent of the actual claim if a loss should occur. Try not to fill out a generic worksheet, which will have cells that are not relevant to your in-

dustry. Go to a Web site like [BIsimplified.com](http://BIsimplified.com) to find forms that are specific to your business sector.

## How much coverage?

Businesses typically buy insurance to replace six to 12 months of lost income and extra expenses. Ideally, you will want to buy coverage for the "period of restoration," or time it takes to repair or rebuild the property, or the date you resume business at a new location. While it is possible to overinsure, most business underestimate the time and expense they will incur. When calculating lost income, be sure to factor in compensation for your projected growth — not last year's income. Please also remember many policies have a co-insurance provision that requires you to insure your property to a specified percentage of the total insured value.

## Extra Expense

After a disaster occurs, the costs of renting new premises and installing new equipment will be only the tip of the extra-expense iceberg. You will also have to pay the cost of moving to your temporary premises, advertising the new location, not to mention heating, lighting and insuring the new site. You will likely have to pay employees overtime, incentives and perhaps increased transportation costs.

Will you have to employ a subcontractor for some of the work previously done by your company? Will you incur additional freight and shipping costs due to the new location? Consider all these factors when completing your business income/extra expense worksheet and your recovery plan. If you need assistance in estimating your business income/extra expense needs, please contact us. ■



PREMISES—continued from Page 1



severity,” says Ross. “Accidents happen, but frequency tells them [insurers] you’re not thinking, and not coming from a safe practices mind-set.”

If you have a high loss frequency, consult with loss control experts. Implement their recommendations and let your broker know. You should see a significant drop in rates.

Even if you have a high-risk enterprise, plenty of excess and surplus lines carriers would be more than happy to give you a quote. Many of these specialize in distinct niches. You can even find specialty carriers for mechanical bull operators and medical marijuana clinics. Your broker can help you access the surplus lines market.

The closer you can get to qualifying for a standard policy, the more reasonable your rates will be. Premises liability coverage through a business owners policy (BOP) tends to provide the most competitive rates. However, you will

need to qualify for a BOP—most limit coverage to businesses with premises of less 5,000 square feet and with less than \$2 million in sales.

### Claims Management

Make sure your company has a reporting structure to alert you as soon as an accident occurs. Make sure the injured person gets timely treatment, and report the incident to police if it is serious. Alert your agent or broker, note or record any statements made by the victim and by witnesses or others involved in the incident, and take photos of the incident area. “The most important thing you can do is to be aware and gather the facts and evidence of what exactly happens,” advises Ross.

### Policy Pointers

Many policies will have exclusions for alcohol liquor liability, asbestos, mold, silica and professional liability, among others. Make sure your policy is not restricted to a single location

and makes provision for unintentional errors, omissions or endorsements. This will allow you to make a claim even if you accidentally filed a wrong address, omitted a site that should have been covered or mistakenly omitted other relevant details from your policy application.

It also important to get a broad knowledge notice included in the policy. This will ensure you will still be able to file a claim if you report a loss after a deadline passes.

### Risk Retention

Companies with known levels of loss exposures should seriously consider retaining risk, says Jim Barber, a senior consultant at RMI Consulting. One client with a known frequency and claims level of between \$300,000 and \$700,000 a year was quoted a premium of \$800,000. “Insurance companies have to pay their legal costs, claims administrations, commissions and other fees, so in some cases it will work out cheaper to insure the risk yourself,” he says. ■

CLIMATE—continued from Page 4



assets as a result of irreversible changes caused by climate change. “The jury is still out,” says Rodney Taylor, managing director of Aon’s Environmental Services Group. “But all we need are one or two court decisions for the floodgates to open and have these cases filed all over the U.S. We will see dramatic changes in the legal landscape in the next four years,” he predicted.

Corporate executives who do not recognize the importance of environmental problems and fail to mitigate their company’s impact on global climate change face huge exposures in their directors and officers (D&O) liability and errors and omissions (E&O) coverage. Regulatory changes will also force dramatic changes in business behavior and production methods. Companies must also weigh heavy risks to their reputation and goodwill if they fail to take action to curb their emissions and pollution.

## 4. Market Changes

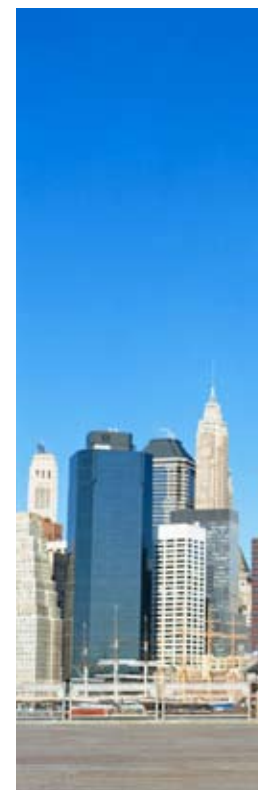
Even companies whose activities are carbon-neutral need to think hard about the exposures they face from climate change. How will hotter weather affect demand for prod-

ucts? As people move from water-scarce regions, how will population shifts affect your markets?

Failure to ask these types of questions doesn’t just lead to an inability to meet new market conditions. They also expose company officers to lawsuits for failing to adequately plan for what is now accepted as an eventuality. 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.

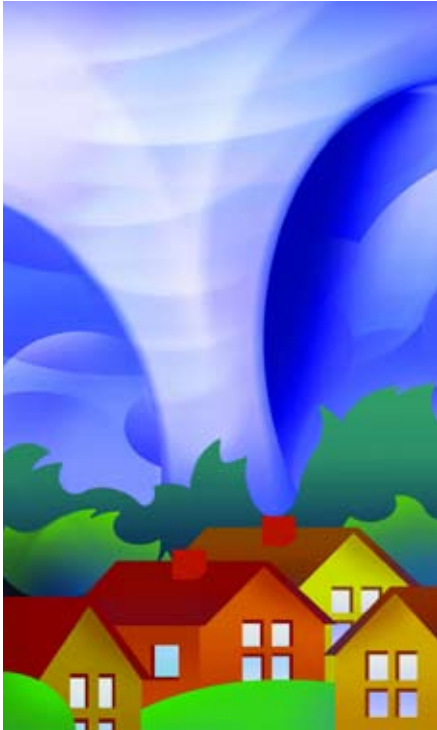
One way the insurance industry will try to cope with these threats is through the development of new policies. Green building programs will offer insurance benefits across the board – for property damage, for workers’ compensation and for health programs. Other policies will support energy-saving programs for buyers and manufacturers. Others predict a dramatic growth in pay-as-you-drive insurance policies, which Kingsley says have already proved enormously effective in trial systems.

Such programs will spur companies to greater efficiency and highlight the ultimate business paradox of global warming. While it poses a severe threat to moribund companies, it provides huge opportunities to forward-looking firms. ■



# Climate Change: A Quick Guide for Risk Managers

Severe weather events are becoming more frequent in many areas and their effects more catastrophic, as populations expand and shift. Do you know how climate change could affect your business risk? It could affect you in more ways than you might expect, and in some that no one can predict.



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, climate change is 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 this weather volatility into 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 in-

creasing. Bove’s analysis of data from the last 17 years shows that a \$1 billion fire loss should be expected every five years. Prior to last year’s devastating 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 patterns could cause more frequent and more violent hurricanes on the East and Gulf Coasts of the U.S.

## 2. Coverage Questions

Climate change can affect numerous insurance lines. Property coverage is obviously at the top of the list, but climate change 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 climate change 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 contribute global climate change can expect to face lawsuits and huge damages in a rapidly changing legal climate. Additionally, companies can expect to see lawsuits that try to hold them responsible for the permanent loss of ecological

CLIMATE—continued on Page 3

## Risks Ignored

More than 50 percent of U.S. businesses sustained an unexpected high-impact loss last year. But almost half of them took no risk management steps to prevent a recurrence, according to a recent survey.

The “Excellence in Risk Management Study,” conducted by the Risk and Insurance Management Society and Marsh, found that 57 percent of firms surveyed were affected by events such as major natural disasters, subprime market issues and product recalls, significant loss of brand or significant internal fraud, but only 53 percent of them modified their policies and practices in response.

One of the most glaring gaps in coverage was

found in supply chain risk. About half of the respondents said they did not have an end-to-end supply chain risk management process in place, while 23 percent of risk managers did not believe they faced a supply chain risk.

The findings were reinforced by a McKinsey survey in which two-thirds of respondents said the risks to their supply chain have increased over the past five years.

The most frequently cited concern was the availability of high-quality labor. Nearly one-quarter of respondents to the McKinsey survey said their company did no formal risk assessment, and almost half lacked company-wide standards to help mitigate risk.