Insurance Buyers' News

WWW.MOCINS.COM

MOC Insurance Services
Maroevich, O'Shea & Coghlan Insurance

Divisions of MOC Insurance Services
Farallon Associates Insurance Brokers
San Francisco Insurance Center

44 Montgomery Street, 17th Floor, San Francisco, CA 94104
Toll Free (800) 951-0600 | Main (415) 957-0600 | License # 0589960

Risk Management January/February 2019 Volume 30 • Number 1

Top Causes of Loss in the U.S. and the World

The largest financial losses worldwide come from fires/explosions and aviation incidents, according to an analysis of the Top Causes of Loss of 470,000 insurance losses around the world by Allianz Global Corporate & Specialty (AGCS) Insurance.

Here are a couple of other quick takeaways from the claims review:

Increased Litigation Costs: In general, litigation is involved in far more liability claims than property claims, with one third of all liability claims involving litigation. Plus, with increasingly bigger personal injury claims, especially in the U.S., that percentage is increasing. Tougher environmental and consumer protection laws are also impacting the trend. Litigation was involved in just one percent of property claims.

continued on next page

This Just In…

The massive November 2018 security breach at Marriott International Inc. has affected 500 million customers due to hacks that began in 2014.

The international risk modeling and data analytics firm AIR Worldwide estimates that the direct cyber incident losses for the Marriott breach will be between $200-600 million. The estimate includes first- and third-party losses directly related to the security breach, including notification costs, forensics, credit monitoring, replacement of credit cards, setting up a call center, and any liability covered under an affirmative cyber policy

The large variance in the estimate reflects uncertainty about just how much data was stolen.

continued on next page

Technology is creating new risks: We can expect "to see more liability claims from emerging technology. For example, autonomous vehicles would see a shift in liability and claims from drivers to manufacturers and software providers," according to Peter Oenning, liability claims specialist at AGCS. "Such claims are likely to be harder to investigate and establish cause, and could result in increased cost and workload per case for insurers."

The ranking of claims by highest value in the U.S. was

1. Fire/explosion: 22 percent
2. Storm: 18 percent
3. Aviation collision/crash: 10 percent
4. Faulty workmanship/maintenance: 6 percent
5. Defective products: 5 percent
6. Other: 39 percent

The review says storm damage ranks as the second top cause of loss (18 percent) in the U.S, driven by 2017's record-breaking hurricane year — and the devastating impact of Harvey, Irma and Maria — as well as further losses from hurricanes Florence and Michael during 2018. However, a number of recent large blazes and explosions, which have caused losses in excess of $100 million and impacted industry sectors ranging from oil and gas to chemicals to automotive, ensure that fire is the top cause of corporate insurance claims in the USA, accounting for 22 percent of the value of all claims. Aviation collision/crash incidents are the third top cause of loss (10 percent). By number of claims, automobile crash/collision is the most frequent cause of loss accounting for one claim in 10. This is followed by water damage and faulty workmanship/maintenance incidents.

Although the report focused on international trends, many of these observations are worth noting for their applicability to business in the U.S.:

Energy: Claims frequency in the oil and gas sector has been relatively consistent lately. However, a number of large fire and explosion incidents, the return of powerful windstorms, the changing price of oil and the growing potential for cyber incidents are of major concern to this sector.

Finance: Financial claims notifications continue to rise globally, while claims are increasingly larger, more complex and international in scope.

Liability: Although claims in economies like the U.S, have been decreasing following improved safety and product quality, severity continues to rise globally. Also, the potential for ever-larger liability claims is driven by many factors including increasing complexity, internationalization of claims and rising legal costs. Around a third of large corporate liability claims involve litigation, compared with property insurance where less than one percent of claims do, on average.

Property: Changes in corporate risk and demand for broader coverage to support the impact of innovative technologies are driving a trend towards increasing volatility in property claims, with larger claims, as well as supply chain and cyber losses.

Even though credit card data was stolen, it was encrypted. But it's unknown whether the encryption key itself was also stolen. Also, some of the 500 million stolen records may be duplicates.

On the other hand, Bloomberg Intelligence Analysts warned of losses as high as $1 billion, including potential fines from the General Data Protection Regulation of the European Economic Community.

Scott Stransky, assistant vice president and director of emerging risk modeling at AIR, said that though this breach is uniquely large, it's not unprecedented. Hotels are common targets of hackers.

Marriott has said that the breach will not affect its long-term financial health and that it has insurance for much of the loss and is working with its carriers to assess coverage. The various policies involved likely include directors & officers liability, business interruption with cyber liability endorsements and other coverages including reputational loss and decrease of stock price.

How's your cyber liability coverage? Give us a call for an evaluation of your insurance program.

Aviation: The global airline industry recently experienced its safest year ever, yet the number of aviation claims shows no sign of abating. Increasing repair costs from composite materials and more sophisticated higher value engines, combined with relatively low deductible levels, are putting more losses within the scope of insurance.

How to Protect Your Interests When Working with Contractors

One of the most effective and simplest ways of protecting your organization from liability due to contractors' and subcontractors' operations is with Additional Insured coverage.

Liability insurance covers you from losses due to claims your company, its employees or products or services caused harm or wrong to a third party. Sometimes, however, your organization can be considered "vicariously liable" when another business, such as a subcontractor, causes harm when doing work on your behalf. In these cases, you would want the contractor or other business' policy to apply rather than yours.

There are two ways to obtain coverage under another entity's policy. In the first, "contractual indemnity," your contract with the other party requires it to "indemnify," or cover you for any liability costs resulting from your joint operations. Alternatively, you can also require the other party to name your firm as an additional insured under its insurance policy.

However, obtaining additional insured status often provides greater protection than contractual indemnity. Some states and courts look unfavorably on contractual indemnity, because subcontractors who want business sometimes have little bargaining power. Additional insured coverage, on the other hand, causes no such problems.

For your contractor to provide you with "additional insured" coverage, it must obtain an additional insured endorsement, which modifies its general liability policy. Unlike the policy owner (or "named insured"), the additional insured has no responsibility for keeping any records needed for determining premiums, paying premiums or reporting claims.

When you require additional insured coverage under another organization's policy, you'll probably ask for a certificate of insurance to provide proof of coverage. Be aware that the certificate provides proof that the coverage existed on the date the certificate was issued.

The named insured can cancel coverage without providing notice to you. You can request the insurer to provide you thirty days' notice of cancellation or nonrenewal of the endorsement. However, the certificate is not part of the policy and not binding on the insurer. In the case of large or high-risk projects, you can request that the contractor modifies its policy with an endorsement that obliges the insurer to provide this notice.

continued on next page

Considerations for Subcontractors

If the shoe is on the other foot and you are a subcontractor, obtaining additional insured endorsements for contractors and providing the required certificates can be an administrative hassle. To solve this problem, you can buy a blanket additional insured endorsement. This provides additional insured coverage to any party with which you enter a contractual agreement (typically a construction contract or equipment rental contract).

Blanket additional insured endorsements are not as desirable for the additional insured. Blanket endorsements do not name specific additional insureds, so the insurer cannot provide notice of cancellation or nonrenewal. They usually provide narrower coverage as well — for example, many of these endorsements state that coverage ends when operations are completed. This could be construed to eliminate coverage for claims that occur during operations but aren't filed until later.

For more information on covering additional insureds, please contact us.

"Need to Have" Liability Coverages for Every Business

There are insurance coverages that all businesses need, some that all business should consider, and some that you need only if you have special risk exposures.

Need to Have

Commercial general liability (CGL) is essential for every business. It will pay your legal costs, along with any judgments or settlements, when you are legally obligated to pay another party due to accident, injuries and claims of negligence. Most policies also provide medical expenses coverage that will pay up to $5,000 or $10,000 toward medical expenses of a third party injured on your premises, regardless of fault.

The CGL covers you for liability arising from:

- Bodily injury, or physical harm to a person that occurs on your business premises or by your employee while driving for business.
- Property damage you (or an employee) cause to property owned by someone else.
- Personal injury, or damage to another's rights or reputation. This includes slander, libel, invasion of privacy, false arrest and wrongful eviction.
- Advertising injury, or copyright infringement and misappropriation of another's idea in your advertising.

The CGL has some significant exclusions, including:

- Employees. It will not cover your employees' claims for bodily injury or employment practices. Two specific types of insurance policies are intended for these types of claims: Workers' compensation covers employees' bodily injury and lost-time claims; employment practices liability insurance (EPLI) covers claims involving employment practices, such as wrongful termination, discrimination, etc.
- Contractual liability, or liability you accept by agreement that would not exist otherwise.
- Liquor liability — for businesses that sell, serve, make or distribute liquor.
- Slander, libel, copyright infringement or misappropriation of another's idea — for businesses in the media industry.
- Pollution
- Damage to your work due to faulty workmanship
- Product recall
- Electronic data

As with most insurance policies, the general liability policy also excludes coverage for claims resulting from war, criminal or intentional acts.

continued on next page

Umbrella or excess liability insurance provides coverage once a claim exhausts the limits of your other, or "underlying," liability policies. For example, if an employee causes a multiple-injury auto accident, your umbrella or excess policy would begin to pay after claims exceed your commercial auto policy's liability limits. Umbrella coverage differs from excess coverage in that it can also "step down" to cover some losses not covered by the underlying policies. However, most umbrella policies exclude coverage for employment practices, professional liability and product recall— all of which can be covered by specialized policies.

Commercial auto insurance covers your business for auto-related liability. Personal auto policies exclude commercial use of the vehicle, leaving a serious coverage gap if you or an employee are involved in an injury or property damage accident while driving for work. Commercial auto insurance can cover vehicles on an individual or fleet basis. We strongly recommend adding to your policy uninsured and underinsured motorists coverage, coverage for borrowed or rented autos, and coverage for employees using their own cars for work.

Business owners' policies (BOPs) combine business liability and property coverages into a standard package, typically including property, general liability, vehicles and business interruption. BOPs can simplify insurance buying and can save you money versus buying separate policies from different carriers. However, if your business has unique risks, this one-size-fits-all coverage might not be your best choice.

Workers' compensation insurance. All states except South Dakota and Texas require businesses with employees to carry workers' compensation insurance or self-insure. The insurance covers all lost time and medical benefits the employer is obligated to pay by state law.

In most states, employers who lack workers compensation insurance face civil fines, and some states impose criminal penalties as well. In states that don't require insurance, employers will probably want it anyway, since without insurance, employees can sue in court for injuries. With insurance, the "workers' compensation bargain" means employees give up their right to sue their employer in exchange for the promise of receiving state-mandated benefits.

If you have questions about Need to Have coverages or feel that you lack any of these coverages, please contact us.

"Nice to Have" Policies Many Businesses Need

Nice to have" policies are those that all businesses should at least consider purchasing. Three of the most important ones include:

Professional Liability

In addition to lawyers, doctors and accountants, many businesses now need PL insurance. 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. Some examples you may not think of right away include:

- Personal Trainers
- Pest Control Services
- Beauticians
- Management Consultants
- Occupational Therapists
- Photographers

Cyber Liability

Some of the main risks of cyber-crime include:

- Identity theft from security breaches of sensitive information when stolen by a hacker or inadvertently disclosed, including Social Security numbers, credit card numbers, employee identification numbers, drivers' license numbers, birth dates and PIN numbers.
- Business interruption from a hacker shutting down a network. Damage to the firm's reputation.

- Costs associated with damage to data records caused by a hacker.
- Theft of valuable digital assets, including customer lists, business trade secrets and other similar electronic business assets.
- Introduction of malware, worms and other malicious computer code.

Directors & Officers Insurance

There are two or sometimes three parts to these policies:

- Part A covers directors and officers, reimbursing them directly for claims of liability that arise from their corporate duties.
- Part B covers the corporation, reimbursing it for expenses it pays on behalf of the directors and officers, if state law permits or corporate charter or bylaws require the corporation to indemnify directors and officers.
- Part C, or "entity coverage," which many policies include, covers the corporation itself when it is named in a lawsuit or claim.

If you have questions or feel that you lack any of these coverages, please contact us