

Insurance Buyers' News



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Property Insurance

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Most Business Policies Cover Riots, Vandalism and Civil Commotion

Different policies cover different kinds of damage to property.

When protestors gathered on the streets of our cities to speak out against the brutal killing of George Floyd, in many instances peaceful demonstrations turned into scenes of violence, vandalism and looting. The damage done to businesses is estimated at \$25 million nationwide at this point.

Here is an overview of the different policies and coverages that may be available to business owners for claims related to these events.



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This Just In...

Partners for Automated Vehicle Education (PAVE), a consortium of self-driving technology companies, has taken exception to the findings of the Insurance Institute for Highway Safety (IIHS) report, as reported in this edition. PAVE has said its cars were programmed to prevent a vastly higher number of potential crash causes than asserted in the IIHS report, including more complex errors caused by drivers making inadequate or incorrect evasive maneuvers.

Taking those design choices into account, autonomous vehicles could avoid some 72% of crashes, they said

Another auto industry group, The Alliance for Automotive Innovation, said in a statement that

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Vehicles

Automobiles are covered under the optional comprehensive portion of an auto policy. This provides reimbursement for damage to the vehicle and its contents caused by fire, falling objects, vandalism or rioting.

Comprehensive coverage will also reimburse you if your windshield is cracked or shattered. Some companies offer glass coverage without a deductible.

Buildings and Personal Property

Damage to the physical plant of a business and its contents caused by fire, riots, civil commotion or vandalism is covered under virtually all Business Owners Policies (also known as BOPs), whether written as named peril or all risks policies. Damage to windows, doors, light fixtures and other items that are part of a building should be covered under the building property coverage included in the policy. Often, however, coverage for plate glass windows is sold separately.

Business income coverage

Businesses that are forced to suspend operations or limit hours due to rioting may have coverage for the loss of income under business income insurance — also known as business interruption. However, this is only triggered if there is direct physical damage to the premises. There may also be a waiting period, typically 72 hours, which acts as a deductible, before coverage starts.

Civil Authority Coverage

However, in addition to losses arising from direct damage to your premises, business income insurance typically includes civil authority coverage as well, which provides loss of income that occurs because access to your premises has been prohibited by civil authority, such as a government entity. Access must be prohibited due to damage by a covered peril to property, not located at your premises.

The standard insurance wording reads:

When a covered cause of loss causes damage to property other than property at the described premises, we will pay for the actual loss of business income you sustain and necessary extra expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following:

- 1 Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- 2 The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the covered cause of loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil authority insurance covers income lost during a defined and limited time, typi-

This Just In

“even reducing traffic fatalities by a third would be something to be proud of,” but that they are striving to do much better.

Jack Weast, vice president of autonomous vehicle standards at Intel Corp.'s Mobileye, in a recent interview with Reuters, said the auto industry was assembling a “vast list of likely road scenarios and human behavior that every driverless car should be able to navigate safely.” Weast also indicated that the autonomous driving industry is coordinating closely with government agencies and insurance companies are part of their process.

“Crashes will never be zero until we have no more human drivers on the road,” he said. “But (self-driving cars) can combine physical laws with behavioral studies and do much more than a human driver.”

cally four weeks. You can extend this time period by paying an additional premium.

Extra Expense

Companies that incur extra expenses to continue operations while the insured premises is being repaired or replaced may be insured under the extra expense coverage provided in most property policies. Typically, this coverage is afforded for costs incurred to reduce a covered loss of business income.

This article based in part on an interview with Loretta Worters, vice president, media relations for the Insurance Information Institute (I.I.I.). ■

Automated Driving Would Reduce Crashes by Only a Third

Driver mistakes play a role in virtually all crashes. That's why automation has been held up as a potential game changer for safety.

But autonomous vehicles might prevent only around a third of all crashes if automated systems drive too much like people, according to a new study from the Insurance Institute for Highway Safety.

"It's likely that fully self-driving cars will eventually identify hazards better than people, but we found that this alone would not prevent the bulk of crashes," says Jessica Cicchino, IIHS vice president for research and a coauthor of the study.

Conventional thinking has it that self-driving vehicles could one day make crashes a thing of the past. The reality is not that simple. According to a national survey of police-reported crashes, driver error is the final failure in the chain of events leading to more than 9 out of 10 crashes.

But the Institute's analysis suggests that only about a third of those crashes were the result of mistakes that automated vehicles would be expected to avoid simply because they have more accurate perception than human drivers and aren't vul-

nerable to incapacitation. To avoid the other two-thirds, they would need to be specifically programmed to prioritize safety over speed and convenience.

"Building self-driving cars that drive as well as people do is a big challenge in itself," says IIHS Research Scientist Alexandra Mueller, lead author of the study. "But they'd actually need to be better than that to deliver on the promises we've all heard."

To estimate how many crashes might continue to occur if self-driving cars are designed to make the same decisions about risk that

humans do, IIHS researchers examined more than 5,000 police-reported crashes from the National Motor Vehicle Crash Causation Survey. Collected by the National Highway Traffic Safety Administration, this sample is representative of crashes across the U.S. in which at least one vehicle was towed away, and emergency medical services were called to the scene.

IIHS separated the driver-related factors that contributed to the crashes into five categories:

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- ✱ “Sensing and perceiving” errors, including driver distraction, impeded visibility and failing to recognize hazards before it was too late.
- ✱ “Predicting” errors, when drivers misjudged a gap in traffic, incorrectly estimated how fast another vehicle was going or made an incorrect assumption about what another road user was going to do.
- ✱ “Planning and deciding” errors, when driving too fast or too slow for the road conditions, driving aggressively or leaving too little following distance from the vehicle ahead.
- ✱ “Execution and performance” errors, including inadequate or incorrect evasive maneuvers, overcompensation and other mistakes in controlling the vehicle.
- ✱ “Incapacitation,” involving impairment due to alcohol or drug use, medical problems or falling asleep at the wheel.

Some crashes, it was determined, were unavoidable, such as those caused by a vehicle failure like a blowout or broken axle.

For the study, the researchers imagined a future in which all the vehicles on the road are self-and could prevent crashes caused exclusively by perception errors or involved an incapacitated driver.

Crashes due to only sensing and perceiving errors accounted for 24 percent of the total, and incapacitation accounted for 10 percent. Those crashes might be avoided if all vehicles on the road were self-driving, working perfectly with systems

that never malfunctioned. The remaining two-thirds of accidents could still happen unless specifically programed to anticipate other types of errors.

Consider the crash of an Uber test vehicle that killed a pedestrian in Tempe, Arizona, in March 2018. Its automated driving system initially struggled to correctly identify 49-year-old Elaine Herzberg on the side of the road. But once it did, it still was not able to predict that she would cross in front of the vehicle, and it failed to execute the correct evasive maneuver to avoid striking her when she did so.

Planning and deciding errors, such as speeding and illegal maneuvers, were contributing factors in about 40 percent of crashes in the study sample.

For self-driving vehicles to live up to their promise of eliminating most crashes, they will have to be designed to focus on safety rather than rider preference when those two are at odds.

Self-driving vehicles will need not only to obey traffic laws but also to adapt to road conditions and implement driving strategies that account for uncertainty about what other road users will do, such as driving more slowly than a human driver would in areas with high pedestrian traffic or in low-visibility conditions.

“Our analysis shows that it will be crucial for designers to prioritize safety over rider preferences if autonomous vehicles are to live up to their promise to be safer than human drivers,” Mueller says. ■

D&O Policies and The Coronavirus

Even before COVID-19, insurance for directors and officers (D&O) was experiencing a hard market.

Premiums had increased 44 percent in the first quarter of 2020. Over the past few years there has been a steady increase in the number of lawsuits and the size of jury awards in cases involving D&O. And now with the coronavirus in full swing, triple digit increases are expected, according to a new report by insurance industry analysts at A.M. Best.

Long Tail Problems

“It’s likely that the COVID-19 pandemic will ultimately lead to greater complexity regarding emerging D&O claims and litigation issues,” said David Blades, associate director, industry research and analytics at A.M. Best. “The inherent complexities of unique COVID-19 claim scenarios could lead to protracted litigation for many claims. ... What that’ll do is it’ll cause the 2020 claims, and particularly 2020 D&O claims, to have an extraordinarily long tail. So that’s something that we’re looking at as things go forward,” he said.

Almost all D&O policies these days are written on a claims-made basis. This means coverage must be in effect at the time the claim is brought

in order to be covered. For example, even if you carried D&O in 2019, a claim brought against your firm in 2020 would not be covered, unless you had continued your policy into 2020 — or purchased “tail coverage.” That’s the significance of long tail claims — because they may not come to light until several years down the road. The practice of writing insurance policies on a claims-made basis, common to most professional liability coverages like D&O, is contrary to the “occurrence” policies provided by most insurance companies for business liability insurance. With “occurrence” coverage, the policy covers the loss when it occurred, not when the claim is brought.

A.M. Best sees a long tail claim problem particularly with respect to COVID-19 be-

cause it may take years before the courts adjudicate claims where D&O coverage may be deemed to apply, such as to whether employers took proper precautions to prevent or alert employees and the public of COVID-19 related contamination and whether government funds made available to businesses to use for COVID-19 related expenditures were properly used.

D&O Policies Likely to Cover COVID-19 Triggers

Although policy wording regarding coverage for COVID-19-related events is controversial with respect to business interruption coverage, A.M. Best analyst Sridhar Manyem, director of industry research and analytics,

seemed to minimize the problem in the case of D&O policies:

“Standard D&O wording may not apply to specific risks associated with COVID-19, but will apply to traditional D&O perils, including those triggered by COVID-19 events... Such ‘silent COVID-19’ coverage may not expressly address pandemic perils but may still respond to them.”

Long Term Forecast

The full A.M. Best Report, “Accelerating Trends, Unprecedented Turmoil Could Lead to Seismic Change for D&O Industry,” foresees the upswing in D&O prices as reflected in these underlying conditions to continue for the next few years. ■



Key D&O Terms You Should Know

Entity Coverage/Allocation Provisions: Claims can get complicated when the corporate entity is named as a defendant along with directors and officers. If the D&O policy does not include entity coverage, the insurer must allocate defense and settlement costs among the (covered) directors and officers and the (uncovered) entity to determine how much of these costs the policy will pay.

Allocation provisions determine how the claims payments will be allocated. Some assign specific percentages — such as 70 percent and 30 percent — which means the insurer would pay 70 percent of costs and the corporation 30 percent. Other allocation provisions leave the allocation up to negotiation between the insurer and corporation.

Severability Provisions: The person who signs the application for D&O coverage must warrant that the information included is true to the best of his/her knowledge. If the application contains a “material misrepresentation,” traditional insurance law voids coverage. A severability provision provides that material misrepresentation by one person will not void coverage for others. Most policies today only provide partial severability, which generally means that the CEO and CFO, who must sign off on the financial statements many insurers require, would not be covered in the event of a material misrepresentation.

Insured vs. Insured Exclusions: The insured versus insured exclusion prohibits coverage for claims filed by a corporation against its directors and/or officers. Originally intended to eliminate coverage for ordinary business losses due to bad judgment, the traditional insured versus insured exclusion could also eliminate coverage in a bankruptcy situation. You can ask your insurer to modify the exclusion, so it does not apply to claims or suits brought by a bankruptcy trustee or similar party.



“Hammer” Provisions: Insurers want to resolve a claim as quickly and inexpensively as possible. This can sometimes mean settling a claim that could have been won in litigation, to avoid high defense costs and potential costs of a loss in court. Some policies include a provision, nicknamed the “hammer provision,” that encourages insureds to accept “reasonable” pretrial settlement offers by limiting the insurer’s liability for the claim to the amount of the proposed settlement. Policyholders should negotiate to have these provisions removed.

Alternative Dispute Resolution (ADR) Provisions: ADR provisions require the insured to consent to participate in ADR at the insurer’s request. ADR can cut defense and litigation costs, but it can also limit your options in a claim situation. When possible, you should negotiate to remove these provisions.

D&O insurance is a complex, nonstandard product, with many possible provisions and exclusions. For more information on structuring D&O coverage for your organization’s specific needs, please call us. ■

