

JANUARY 10, 2018

CONTINGENT BUSINESS INTERRUPTION: PROTECTING YOUR MANUFACTURING FACILITY

This year, the United States witnessed firsthand the destruction severe weather events can have on homes, businesses and local economies. The [National Oceanic and Atmospheric Administration](#) reported that 15 extreme weather events in 2017 – including flooding, freezing, cyclones and wildfires – caused losses exceeding \$15 billion. This number doesn't even include the devastating damages from Hurricanes Harvey, Irma and Maria. Clearly, 2017 is already shaping up to be one of the costliest years on record when it comes to losses from weather-related events.

For manufacturing companies, the risks associated with catastrophic events go far beyond the damage caused to a facility. For instance, many manufacturers rely on parts and raw materials from external suppliers. If a supplier's factory is temporarily shut down or if a key shipping channel is closed as a result of damage caused by a catastrophic event, this could prevent a facility from receiving components needed to effectively produce a product on time.

Unfortunately, the smallest interruption in the supply chain can incapacitate a facility's operations for a significant period of time – and even put the company out of business. To help mitigate this risk, many manufacturing facilities purchase Contingent Business Interruption (CBI) insurance. CBI insurance is designed to cover the loss of income resulting from property damage at supplier or receiver locations, rather than damage directly to your facility.

When considering CBI insurance, understanding the specific risks that could disturb



your operation is essential. According to a recent [study](#), 42 percent of businesses have only limited visibility into their supply chain. To properly reduce risk, it's important to holistically evaluate all domestic and international suppliers across all tiers from the bottom-up, understanding where potential shortfalls could occur if there is a suspension in activities.

Natural disasters cannot be prevented and often strike without warning. Therefore, preparedness is key to preventing business interruption losses. Once you have evaluated how different supplies contribute to your business, creating a contingency plan will help ensure your facility can maintain operations should there be a disruption in your supply chain. This includes having backup providers on hand and maintaining ample product reserves. While some raw materials can easily be obtained from multiple sources, this isn't always the case.

No two insurance policies are created equal and contingent business interruption is no exception, so it's imperative to work closely with your insurance broker to guarantee policy language broadens coverage for your operational risks. Even minor downtime in your supplier network can affect daily revenue. Your insurance broker can help to map out the complex supply network to accurately estimate maximum financial impact - which is critical to guarantee proper coverage limits are in place, preparing you for a worst case scenario.

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Employment practices liability insurance (EPLI) has become an increasingly prevalent policy for organizations varying in size. These types of policies not only cover alleged sexual harassment claims, but also other alleged wrongful acts in the workplace, including racial discrimination, defamation, wrongful termination or failure to promote based on race, gender or sexual orientation.

[The Denver Post](#) recently reported a sharp increase in EPLI policies as a result of the many allegations against high-profile individuals in 2017. While these policies are important in protecting companies from alleged employment practices type claims, recent news has proven that claims are a real concern which organizations must address head-on.

Ensuring that all employees feel safe at work does not start with insurance policies – it starts with the right education, training and culture. It is important that organizations work with their insurance brokers to implement best practices in the workplace regarding employment issues such as harassment and discrimination. A few best practices for companies include:

1. Educate employees: The lines are often blurred when it comes to appropriateness in the workplace. It is crucial that employees are informed of specific organizational policies so that they can determine what constitutes harassment and a hostile work environment. When employees are educated they will be equipped to follow the guidelines if they find themselves or others in an unwanted situation.

2. Promote the culture: A company's culture is something that should be valued by all employees. An inclusive work environment is integral to a business' ultimate

success. It is imperative that organizations make it clear that harassment and discrimination will not be tolerated. If an individual is acting in a way that is making others uncomfortable or organizational leadership deems to be inappropriate, it should be addressed quickly and thoroughly for the safety and wellbeing of others. Employees should feel respected by colleagues and safe to speak with their managers and human resources department regarding potential issues in the workplace.

3. Hire for fit: It is not only important to hire based on credentials and competency, but also for fit within the culture of the company. Weaving questions into the interview process that give executives insight into who the candidate is as a person will help to ensure that they will fit in culturally. Background and reference checks are also best practices to verify that there hasn't been past history of inappropriate behavior in the workplace.

Harassment and discrimination are difficult issues that, unfortunately, can occur in the workplace. Creating an environment in which everyone - no matter their gender, race or sexuality - feels comfortable and safe is the most important thing an organization can do to protect its employees and its bottom line.



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With the winter months quickly approaching, employers across all industries must prepare for cold weather hazards resulting from freezing temperatures. According to the [Bureau of Labor Statistics](#), nearly 43,000 workplace injuries and illnesses resulted from falls, slips or trips involving ice, sleet or snow in 2014. Unfortunately, New York and Pennsylvania were two of the states noted as having the highest frequency of claims.

Luckily, businesses can significantly reduce slip-and-fall exposures by taking the appropriate steps to ensure their property is safe for employees and guests. Organizational leadership should consider implementing the below strategies:

1. **Anticipate weather conditions.** Although simple, staying informed on weather reports is the first step to winter safety preparedness. Emergency weather reports and alerts are often broadcasted days prior to storms, providing managers with sufficient time to prepare maintenance staff and ensure all ice, sleet and snow removal procedures are in place.
2. **Plan removal protocols in advance.** In advance of a storm, formal protocols should be determined for shoveling and salting the areas outside of a building so hazardous ice and snow can be removed quickly and efficiently. This safety plan must spell out responsibilities when it comes to salting, shoveling and de-icing parking lots, walkways and stairs. If specific

areas are known to be prone to bad weather incidents, these sections should be marked with cones or barricades to prevent employees from taking this route.

3. **Weather proof the indoors.** It's important for businesses to remember that slip and falls caused by winter weather can occur inside a facility, as well. Puddles and wet floors are often unavoidable after a storm due to employees tracking in snow and moisture. Rugs and mats should be securely placed in front of entrances to help reduce water build-up. Caution signs should be positioned in highly visible areas, alerting employees to the potential danger.

Winter weather is unpredictable and can result in serious workplace injuries. If an accident does occur, businesses must ensure that they have a full-service claims team designated to handle the issue. This team should include a risk manager, broker claims consultant, carrier claim representative and defense counsel – the individual expertise of each team member will help to ensure that all incidents are handled in an appropriate manner at every step of the way.

Employers who understand the perils associated with ice, sleet and snow can proactively take steps to protect their employees – and their business. Because the risks associated with each individual property are unique, insurance brokers will play an important role in working with company leadership to identify the right safety precautions and create customized procedures in advance of the cold weather.

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Last month, the rate impact of recent Florida Supreme Court rulings on the state's workers compensation system was in the hands of regulators, as the Office of Insurance Regulation (OIR) decided on the National Council on Compensation Insurance's (NCCI) **filing seeking a 19.6 percent rate increase**. In late September, the OIR gave contingent approval for an overall statewide workers compensation rate increase of 14.5 percent, effective Dec. 1, 2016, for new and renewal business with no change in rates for policies currently in force. The response to the rate increase has not been positive, with employer groups claiming the increase will help lawyers, not workers themselves.

Florida Workers Compensation Rate Increase: What you need to know

The rate increase is in response to two Florida Supreme Court decisions, *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla., April 28, 2016) and *Bradley Westphal v. City of Petersburg*, 194 So.3d 311 (Fla., June 9, 2016), and updates to the Florida Workers' Compensation Health Care Provider Reimbursement Manual (HCPR Manual). In support of the proposed rate increase, the NCCI argued these court decisions will significantly increase the costs of workers compensation claims because higher attorney fees will be awarded and the availability of these fees will drive litigation with respect to both the amount of claims litigated and the length of the litigation.

Most of the increase (10.1 percent of the 14.5 percent) is attributed to the *Castellanos* case, which struck down as unconstitutional the mandatory attorney fee schedule, and now permits a judge to consider the reasonableness of the statutory fee in order to determine whether the fee is adequate or whether a deviation from the fee schedule will be permitted. Many believe the *Castellanos* decision will increase the amount of litigated claims in the state, as negotiated fee agreements between claimants and attorneys are now permissible, and a claimant's attorney is no longer prohibited from receiving compensation beyond the state's statutory fee schedule.

The *Westphal* decision held that the 104-week limitation on temporary total disability benefits had the potential to result in a coverage gap in benefits that was a violation of the constitutional right of access to the court. The court determined the limitation of temporary total disability benefits should be restored to a prior version of the statute, which provided for 260 weeks of temporary benefits. The decision accounts for 2.2 percent of the overall rate increase, and it is expected to increase the value of open indemnity claims involving substantial injuries, as well as reopen claims that were previously closed.

The remaining 1.8 percent of the increase is attributed to legislatively mandated updates to the HCPR Manual, which adjust the maximum reimbursement rates for medical services.

What the future holds

In addition to the increased costs of future claims, during the hearing on the proposed rate increase, the NCCI discussed the unfunded liability presented by these court decisions and estimated that it could exceed \$1 billion. The NCCI noted the decisions have a retroactive impact on claims occurring prior to the effective date of any rate increase that remain open or are reopened. However, the premiums collected on the expired or expiring policies will not be reflective of the additional costs and exposure resulting from the recent court decisions. As such, these unanticipated costs will be borne by insurance companies, self-insured employers and those employers with deductible policies for years to come.

Due to the anticipated effects of the *Castellanos* and *Westphal* decisions - the increased attorney fee costs, the increased indemnity costs and the unfunded liability - many believe the OIR-approved increase is not nearly enough. During the rate hearing, NCCI's own actuary admitted the rate increase it proposed was very conservative and likely to be followed by subsequent rate increase requests in the near future.

These predictions come as somber news for employers that are already struggling to control costs of rising workers compensation premiums and claims. One hope is legislators in Florida recognize the need to develop a solution to balance the need to protect employees against the need to control costs for employers soon before there are damaging impacts to employers across the state.

If you have questions about what the rate increase will mean for your business, contact your consultant at The Graham Company.

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Winter weather is finally upon us. Freezing temperatures combined with snow, sleet and ice can create treacherous, slippery sidewalk conditions with increased risk for slips, trips, and falls outside and inside your business. Businesses tend to be most susceptible to winter weather slip-and-fall claims, which can strain an organization's financial resources.

Businesses should always take reasonable steps to make sure their property is safe and free from any dangerous conditions that could cause a slip, trip or fall. However, sometimes accidents are unavoidable. Taking safety measures to prevent slip-and-fall exposures should be practiced within any business. The following strategies can help businesses reduce potential slips, trips, and falls

accidents. Adopting such strategies may also help businesses in the defense of such claims.

Winter Slips, Trips and Falls Prevention Tips

Prepare for weather. Look out for emergency weather reports and alerts and have facilities plan for inclement conditions.

Snow Removal Protocols. Implement formal protocols for shoveling and salting areas outside the building. Protocols should be consistently enforced. Be sure to maintain proper work logs indicating the dates and times of such efforts. This also goes for any vendors who are responsible for snow removal.

Weather Proof Inside. Keep the inside of the building dry and place signs where there may be wet or slippery floors. This should also be consistently completed and enforced. Be sure to maintain proper work logs indicating the dates and times of such housekeeping efforts. This also goes for any of your vendors who are responsible for cleaning/housekeeping.

While businesses can take all the right safety precautions to prevent slips-and-falls, they are not immune to such claims. When a claim is received, there are instances when those claims are exaggerated. A major issue for many companies is determining whether a slip-and-fall accident warrants a settlement or if the business should defend itself against a lawsuit. Many companies will end up paying the claim because they didn't conduct an internal investigation. To avoid this kind of risk, businesses need to implement response protocols.

Accident Response Protocols

The first step is designating a claims team to handle any slip-and-fall issues. The team should include a risk manager, broker claims consultant, carrier claim

representative and defense counsel .

The next step is implementing company-wide protocols giving employees the right tools to help them investigate and document such claims. Without information, the claims team cannot make a decision as to whether or not the claim should be settled.

Accident protocols should be customized to an organization's operations and include step-by-step instructions, including:

1. How to respond to a slip-and-fall incident
2. The designated team member to notify about the incident
3. How to document the incident (i.e. incident report)
4. When to conduct an investigation

Reducing risk

An organization can also decrease its risk to slip-and-fall exposure by way of contract. For example, a business can transfer the risk of icy walkways to its snow removal company so that in the event of a loss, that company will be financially responsible for the slip-and-fall claim.

Vendor Management. Ensure that all contracts with vendors for inclement weather-related services are current and provide the business with the opportunity to effectively transfer risk.

Conclusion

Slip-and-fall claims can have a negative impact on any business. If not properly addressed with the right safety precautions and accident protocols, a business can be impacted and now is the time to take control.

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Have you or any of your employees received an email requesting that you transfer funds to a bank or vendor? Did you transfer the funds to only find out later that the email was a fake and now the funds are gone? If so, you, like so many others, were the victim of a Spear-Phishing Attack!

Spear Phishing, also known as Social Engineering Fraud or Fraudulent Impersonation, targets a specific individual via email with the intent of deceiving the individual into transmitting funds, releasing confidential information, etc. In most cases, once the funds have been transmitted, it is extremely difficult to recover them.

So how does this happen? The criminals, who are generally located outside of the

United States, target corporate executives and gain access to their emails. They make minor changes to the executive's email address and then send an email to an employee requesting that funds be wired. This has cost corporations millions of dollars in not only the loss of the funds, but also the investigation and potential litigation costs.

Insurance coverage is available for this type of fraud. It is generally provided by way of an endorsement to your Crime Insurance policy. While purchasing the insurance is advisable, the best defense to a claim like this is prevention.

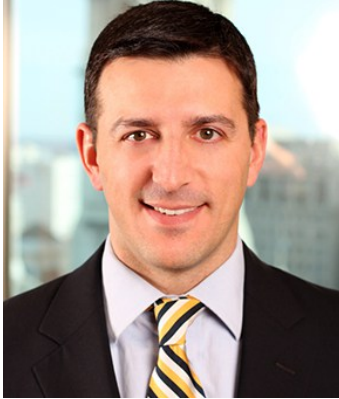
Spear Phishing Prevention Tips

So how do you prevent becoming a victim of Fraudulent Impersonation? The following are some suggested practices for mitigating these types of losses.

- Education and training are the number one avenues to risk mitigation.
- Develop procedures requiring two or more employees to sign off on any wire transaction.
- Prior to transmitting funds to a new bank or vendor, a telephone call must be made to the original bank/vendor and specifically to a previously established contact.
- Provide frequent communication to employees regarding Social Engineering Fraud and what to do if an employee suspects suspicious activity or a potential attack.
- Conduct third party computer network penetration testing on a regular basis to monitor the effectiveness of the corporation's controls, training, etc.

It is highly unlikely that Social Engineering Fraud will lessen. In fact, it is projected to increase in both frequency and sophistication. But knowing what it is, how it is perpetrated and how to avoid it will help your organization from becoming a victim

to it.



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If you are a manufacturer, there are three types of product defects you need to be aware of: design defects, manufacturing defects and marketing defects. Not only can your defective product liability claims drive up your insurance premiums, but they can make it difficult for you to insure your business at all. Knowing the crippling impact of product defect issues, it is important for manufacturers to take the right steps to mitigate risk.

Understanding Defective Product Liability

One of the challenges of product claims is that many times manufacturers do not

know about them until many years later. In other words, if someone is injured by a product, the manufacturer may not know about it until two or three years down the road. This is unfortunate because it means companies lose the opportunity to conduct an immediate investigation. Many times the manufacturer's first notice of an injury is when the lawsuit is served.

If you are a manufacturer that finds itself in one of these situations, you need to make sure you work with your insurance broker to ensure your insurance carrier has the right attorneys to defend you in the matter. While it can be tempting to simply settle a case so you can move on, this can be harmful for your business in the long-term. Settling quickly, without properly defending yourself, can set a precedent that your company will pay anyone who files a claim. Clearly, this is not a reputation you want to have for your product(s) or for your company.

How to Protect Your Business against Defective Product Claims

So, how do you protect yourself against these claims? It all starts with being proactive. Implementing a strong quality control program to help make sure any potential product defects are caught before they leave the warehouse is imperative. And don't forget about your contracts with business partners. Ask yourself: *are they going to indemnify and defend me if there is a problem?*

Lastly, having a comprehensive and tailor-made insurance program is essential. While a general liability policy will provide coverage for product claims, the policy will only pay for the damage or harm the product caused. It does not pay for the costs to repair the product or recall it. For example, if you manufacture cars and need to recall a model because of a product defect, the cost of doing so can be very expensive – especially if you do not have product recall coverage. If you are a smaller business that cannot afford to pay for product recall costs out of pocket, and you do not have product recall insurance, it could bankrupt your organization.

Product liability claims are serious matters that require serious attention. If you



take the necessary precautions - including implementing a quality control program, contractually transferring risk, having a comprehensive insurance program, and properly defending yourself - your business will be standing on solid ground.

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