

Risk Monitor



Is Your Intellectual Property At Risk?

Intellectual property is the crown jewel of any business, no matter its size. That's why R&D departments exist and also why companies incur great expense to obtain patents. In fact, the race to innovate has heated up dramatically. But as Tom Aepfel noted in an October 25, 2004 The Wall Street Journal article entitled "Patent Dispute Embroils Industries," the growing drive to be first has also ushered in another phenomenon:

"The number of U.S. patents issued annually has more than tripled over the last two decades to 187,017 in 2003 as companies try to distinguish themselves among other global competitors with new products or processes. But patents are also the source of growing litigation. There were 1,553 patent-infringement lawsuits filed in 1993 in U.S. federal court, compared to 2,814 last year."

In the past, many businesses relied on the coverage provided under the advertising injury portion of their comprehensive general liability insurance to protect them if they were accused of violating intellectual property. The parameters of advertising injury in these policies included coverage for the unintentional acts of misappropriating advertising ideas, or the infringing upon copyright, title or slogan that occurred during the course of advertising goods, products, or services. However, since most companies' activities go well beyond the scope of what could realistically be defined as advertising, the protection provided by commercial general liability is obviously too limited in this area to be of real value. Under the typical commercial general liability policy, infringement of intellectual property claims that resulted from activities other than advertising would not be covered. By the



same token, intentional acts of infringement are also not covered.

The gap between what is and what is not covered in terms of intellectual property infringement under commercial general liability presented a serious problem as competition increased. That's why insurers developed a specialized type of coverage called Intellectual Property Insurance. This type of coverage has two forms. The most popular form is defense coverage.

This is designed to underwrite both the cost of mounting a legal defense against an intellectual property infringement lawsuit and the cost of any settlements or judgments that result from it.

The second type of coverage is called enforcement or pursuit coverage. This policy is for the party that has been wronged so that it can pursue anyone that has infringed upon its intellectual property. This type of coverage is especially appealing to a company that has a valuable patent, but may not be positioned in terms of its capital to exploit that patent's potential as well as one of its larger competitors. Having this coverage safeguards the company's intellectual property rights while it acquires the capital it needs and enables it to go after a competitor who violates those rights.

Losing one's intellectual property can mean the death knell in the current global economy. As companies find themselves having to compete both domestically and in emerging markets abroad, it's clear that innovation is the only way to stay in front of the herd. If that's the case, then it stands to reason that Intellectual Property Insurance is one more necessity for doing business in the new economy.

Welcome to the first edition of our 2006 Newsletter.

This is just one small way we try to add value as your insurance broker. Please feel free to contact us to learn more about anything in this newsletter or if you would like to see something highlighted in the coming issues. If you are not a client and would like to learn more about our services, visit us on the web at www.chinsurance.com.

We appreciate your business.



The Corcoran Havlin Sales Team; from left Jack Keefe, President; George Doherty, Executive VP; Mark Sawyer, Vice President; Rick Weden, Vice President; Ronald Long, Account Executive.

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Should You Have a Defibrillator Onsite?

Cardiac arrest is a topic for which most people believe they are knowledgeable, but in reality know little about. Below are some chilling facts from the American Heart Association (www.americanheart.org) that emphasize just how potent a killer cardiac arrest is:

- The most common underlying cause of sudden cardiac arrest is a heart attack that results in ventricular fibrillation (VF) (quivering of the heart's lower chambers) or pulseless ventricular tachycardia (extremely rapid but ineffective beating of the heart's lower chambers). Such irregular heart rhythm causes the heart to suddenly stop pumping blood. A small number of cardiac arrests are caused by extreme slowing of the heart (bradycardia).
- The victim may or may not have been previously diagnosed with heart disease. Under certain conditions, various heart medications and other drugs — as well as illegal drug abuse — can lead to abnormal heart rhythms that cause cardiac arrest and sudden death. Other causes of cardiac arrest include respiratory arrest, electrocution, drowning, choking and trauma. Cardiac arrest can also occur without any known cause.
- A victim of sudden cardiac arrest abruptly collapses, is unresponsive to gentle shaking, stops normal breathing and after two rescue breaths has no signs of circulation such as normal breathing, coughing or movement. Death can occur within minutes if the victim doesn't receive treatment.
- Brain damage can start in just four to six minutes after the heart stops pumping blood.
- An estimated 95 percent of sudden cardiac arrest victims die before reaching the hospital.

As part of your workplace safety program, you should consider an Automatic External Defibrillator (AED) as an

addition to your preparedness equipment. This device analyzes cardiac wave patterns to see if the heart is fibrillating properly. If it senses an abnormality in the pattern, it sends an electric shock to the heart to get it back on the right pattern. The shock is delivered through electrode pads applied to the victim's chest.

Operating a defibrillator may seem like more responsibility than the average employee should handle in this type of crisis. As the demographics of the American workplace change, however, and employees work long past previously accepted


retirement age, it makes more and more sense to include a defibrillator in the workplace. The American Heart Association states that AEDs are safe for trained lay rescuers to treat sudden cardiac arrest because the devices analyze a victim's heart rhythm automatically and only allow an electric shock to be delivered if necessary. AEDs are easy to use, compact, battery operated, lightweight and durable.

Beyond the ease of use, there are other important reasons to have a few of your employees trained to operate an AED. A sudden cardiac arrest victim's survival is directly linked to the amount of time between the onset of arrest and defibrillation. If CPR isn't performed, a victim's chances of survival are reduced by seven to ten percent for each minute of delay until defibrillation. When CPR is provided immediately and the first defibrillation shock is delivered within three to five minutes, survival rates from sudden cardiac arrest are between 48 to 74 percent.

If you are worried about liability issues, you shouldn't be. Currently all states have approved an extension of the "Good Samaritan" laws to cover the lay rescuer who uses an AED. In addition, the Federal Cardiac Arrest Survival Act extends federal immunity for civil liability to both the user of the machine and its purchaser.



Loss Control Tips for Laptops



Have computer will travel. More and more businesses are learning that these four words make up one of the secrets of staying competitive. For meetings outside of the office, you've got to take your show on the road and the best way to carry everything you need to make a presentation is on your laptop. But along with this freedom of mobility comes a Pandora's box of problems. The only way to keep the lid on the box is to practice some basic loss prevention techniques.

Whenever you travel, you should carry your laptop in a nondescript case. It should never look as though you're carrying a computer. Never let your laptop leave your sight and secure it in the hotel safe when it is not in use. Do not make the mistake of thinking it is safe locked up in your hotel room. Your room is open and vulnerable when the maid is cleaning it and there is the possibility that somebody can walk in unnoticed and take it.

When you are attending an off-site meeting, be sure that your laptop is secure during breaks. Be aware of your surroundings. Take notice of the various ways to enter your meeting room and make sure that all doors are locked during breaks. If they aren't, take your laptop with you.

Never leave a laptop in plain sight in a locked vehicle; and never put it in the trunk unless there is no other alternative. Thieves assume valuables are in a trunk and that's the first place they look. When you fly, never check a laptop as luggage. It can be stolen or, at the very least, damaged as a result of rough handling. When you go through airport security, take the laptop out of the case and hand it to the guard before you walk through the metal detector.

Of course, a laptop's portability also makes it a security risk even when you are in your own office. You should always keep your laptop in a secure location when not in use. Lock it up or take it with you when you go out to lunch or to a meeting in another part of the building. Keep a record of the make, model, and serial number of your laptop in the event it is stolen.

Preventing loss applies to your data too. You should keep a regular data back-up schedule so that you will not lose valuable documents in the event of equipment failure. You should also minimize the amount of proprietary data or intellectual property that is stored on the hard drive. Develop a two-tiered password system or use data encryption to protect information that is stored on your hard drive.



Another way you can protect your laptop, which is well worth considering, is arming it with a tracking device. These operate using the same principle a LoJack system uses to protect your car from being stolen. You install software, which runs unobtrusively in the background, reporting in to the security company on a pre-set schedule. The software program tells the security company who logged in on the laptop, and the IP address that it's using. If a laptop is stolen, the security company will change the computer's reporting schedule to be more frequent. The thief is unaware that every time he/she goes online, the laptop's location can be tracked.

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of equal dollar value. Since the second company is more prone to claims, for any claim over the highest dollar value claim, only a fraction of the amount in excess of that dollar value is used in the calculation. Also, in some states only a percent of the medical only claims are used in the formula. These adjusted claims are compared to the expected losses for the industry class and payroll size of the organization, and an experience modification rating is given to the individual employer. A rating that is less than 1.00 will reduce the company's premium, while a rating that is greater than 1.00 will increase it.

Obviously, a company will want to find ways to lower their rating. One method a company shouldn't try is to manipulate

class codes when they are obtaining a policy in an effort to get the most payroll into the lowest rated class. This may actually raise the experience modification rating in the long run.

Because the rating is calculated from a comparison of actual losses versus expected losses, allocating payroll to less risky classifications will also put you in line for expected losses that are far lower than what you realistically experience. This increases the likelihood that your actual losses will be greater than expected for the classification, leading to a higher rating in the future. The best way to decrease your rating is to make safety a priority, which will eliminate losses and save you money in the long run.

Experience Modification Ratings Do Not Have to Adversely Affect You

If you are an employer who has received an experience modification rating, it is imperative that you understand how it affects your workers' compensation premium calculations to make your rating work in your favor.

Workers' compensation coverage is known as a class rated insurance program. That means that an insurance company gives all employers within a state who fall into a given industry or class the same rate. This is an average rate which doesn't take into consideration any individual characteristics of the employer. Since policy premiums are affected by the individual factors surrounding the business, carriers need a statistical method of differentiating one business in a given class from another. This is what an experience rating offers.

The experience modification rating is calculated individually for each employer who qualifies. In order to qualify, you would need to pay a premium in excess of \$10,000 or a 3-year average premium of \$5,000, depending on the state. The modification rating is a value that compares the claim profile of the employer

to the claim profile that would be expected of an employer of similar payroll size in the same industry or class code. In this system, 1.00 is average, meaning the frequency and severity of the actual employer's losses is equal to what the carrier would expect the employer to lose. A rating greater than 1.00 means the employer has experienced worse than expected losses during the rating period, and a rating of less than 1.00 indicates the employer experienced better than expected losses for the rating period.



An employer's experience modification rating is calculated using claims data from the three most recently completed years. The current calendar year would be excluded because it would not give a full picture of the year's losses.

Each claim's paid and reserved value is listed. Then the frequency of claims is evaluated. An organization with only one large claim will be looked on more favorably than a second one with numerous smaller claims even if both companies' losses are

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