

Risk *topics*

General Liability

Introduction

Liability exposure is the possibility of a financial loss due to a claim by a “third party.” Liability can result from civil wrongs or tort cases, including negligence and strict liability. Liability can also result from a breach of contract or can be assumed under the terms of a contract.

In insurance language, the party causing the injury (the tortfeasor) is called the “first party.” The party who had been wronged or injured is called the “third party.” The insurance company promises to pay on behalf of the “first party” all judgments that their insured (first party) is legally liable to pay to the “third party.” Tort law is the area of primary concern in liability insurance, because the General Liability Insurance contract provides coverage for tort breaches of duty subject to some exclusions. Contractual Liability coverage in a General Liability insurance contract is expressly limited to the “incidental contracts” only. A business can choose to buy additional contractual protections for other contractual exposure

In order to manage its liability risks, a business must identify and assess applicable risk factors affecting its business operations. The next step is to develop

and implement an effective loss prevention and control program.

Factors Affecting Liability Risk Management

Premises

- Ownership
- Design, construction, condition and maintenance of:
 - The building and appurtenances;
 - The elevators, escalators, stairways, and entrance doors;
 - Physical plant and equipment.
- Condition, location, operation, and protection of:
 - Railroad sidetracks, roadways, walkways, waterways, ramps, and docks;
 - Parking lots, yards, marinas;
 - Cranes, chutes, hoppers, and conveyors;
 - Dumps, retention ponds, ditches, and streams;
 - Stacks, towers, and poles;

Risk Engineering

Where standard solutions are the exception



- Electrical equipment;
 - Tanks, silos, storage piles;
 - Swimming pools, gymnasiums, grand stands, bleachers;
 - Balconies, stairs.
- Construction activities:
 - New; alterations, additions;
 - Excavation, demolition.
- Merchandising displays

Physical Environment

- General life safety considerations:
 - Building constructions, occupancy;
 - Exits, travel distances, emergency lighting;
 - Fire detection and protection, automatic sprinklers;
 - Alarms, elevator operations;
 - Emergency power supply, illumination;
- Evacuation plans.
- Housekeeping
- Traffic pattern:
 - Vehicles;
 - People;
 - Materials.
- Emergency systems

Products/Completed Operations:

- Products
- Completed operations: off site services
- By-products, if sold

Contractual Liability

- Incidental Contracts:
 - Lease of premises;
 - Easement agreements;
 - Railroad sidetracks;
 - Elevator maintenance agreements;
 - Indemnity contract required by a municipal ordinance.
- Hold harmless and indemnity contracts
- Purchase and rental contracts
- Liability assumed through a contract
- Written contract and agreements

Operations

- Operations/Process:
 - Description of operations;
 - On the premises;
 - Away from the premises;
 - Related to the business;
 - Unrelated to the business;
 - Packaging, shipping;
 - Loading, unloading;

- Deliveries.
 - Discharges;
 - Permits;
 - Emergency preparedness;
 - Past incidents (leaks, spills, discharges).
 - Maintenance activities:
 - Type of work;
 - Owner, employee, or contractor.
 - Loss prevention activities:
 - Hazard communication, restricted area, work permits, tools, training.
- Human Environment**
- Employees:
 - Hiring, supervision;
 - Qualification and training in operations;
 - Guards, watchmen, fire brigades;
 - Training in safety, security and emergency operations, evacuation, and crowd control;
 - Awareness of exposure to public from delivery, servicing, installation, trade shows, and conventions;
 - Sales demonstrations, samples by salesmen.
- Raw materials characteristics:
 - Physical, chemical, biological;
 - Handling and storage.
 - Machinery, equipment, and tools:
 - Type, ownership, and conditions;
 - Preventive maintenance;
 - Highly pressurized;
 - Developing extreme temperature;
 - Generating electromagnetic radiations;
 - Producing excessive dusts, vapors, fumes, or mists;
 - Creating excessive surface or earth vibrations;
 - Potential for fire or explosion;
 - Biohazards.
 - Environmental impairments:
 - Surroundings;
 - Waste generations, storage treatment, and disposal;
 - Exhaust system, scrubbers, filters;
 - Underground tanks: construction, capacity, contents, age, protection, monitoring;
 - Above ground tanks: construction, capacity, contents, diking;

- General public:
 - Neighborhood exposure;
 - Plant tours – guided or unguided;
 - Independent contractors: type of work;
 - Service and supply persons;
 - Passersby (attractive nuisance);
 - Visitors (invitees, licensees, trespassers);
 - Handicapped patrons, visitors;
 - Company-sponsored activities, i.e., sports, picnics, exhibits;
 - Liquor liability;
 - Self service operations.
- Security:
 - Shoplifting, false arrest;
 - Failure to provide adequate security;
 - Armed guards, watch dog;
 - Alarms and monitoring devices.

Miscellaneous Items

- Management attitudes
- Compliance with regulations and accepted safety practices
- Bailment-property of others under care/custody/control
- Incidental and non-owned auto exposures

- Contingent liability responsibility:
 - Acts of employees, agents, children, pets.
- Personal injury exposure

Loss Prevention and Control

A successful loss control program requires a strong commitment by senior management. Losses cost the business in many ways, including lost profits, liabilities, regulatory compliance problems, and even loss of reputation. Money spent on loss prevention control programs always produces big returns by reducing the direct and indirect costs of accidents and losses. A loss control program should be developed and implemented commensurate with the degree of risk present. Key elements of an effective program are:

Hazard Identification: The first step in the program is to have a systematic way to identify and assess various hazards and exposures threatening a business. A physical inspection of premises and operations (and job sites) will help in identifying risk factors and potential loss exposures threatening a business. A suitable checklist can be developed to facilitate systematic and thorough self inspection activities. Information and understanding of specific codes, safety regulations, standards, and industry practices can also be an effective source of hazard information.

Hazard Control: Once a list of hazards and exposures is identified, approximate controls can be implemented. Controls should be prioritized commensurate with the severity and likelihood of hazards. Hazard control actions may range from elimination of a hazard to guarding or isolating the hazard, to employee training or placing warning signs, or using other administrative controls.

Loss Analysis: All accidents and incidents should be properly investigated to determine the root cause of a problem. Proper and timely investigations assist in implementing appropriate and effective corrective actions and reduce future potential liabilities. In addition to investigating individual accidents and losses, it is important to conduct a collective analysis of all accidents to identify any developing trends.

Summary

A tort is a civil wrong that arises from the violation of a legal and natural right that is not created by a contract. If a person fails to observe those duties owed to other persons, and it results in property damage or injury to someone, the wrongdoer will be held legally liable for injuries to the other party or the damage to his property. A person owes a duty to other persons not only to refrain from doing any intentional or deliberate act to injure or damage another person's property, but also to exercise adequate care in his actions to avoid causing unintentional harm to others. Failure to use the care that is required to protect others from an unreasonable chance of harm is called "negligence."

If a deliberate action that is potentially hazardous results in a mishap, it leads to a strict liability. This is irrespective of negligence. Contractual liability, on the other hand, results from violation of terms of a mutually agreed upon contract or liability assumed under the terms

of a contract.

General Liability Insurance contract provides coverage for tort breaches of duty subject to certain exclusions. Some of the exclusions can be eliminated by obtaining additional coverage, e.g., bailment.

Insurance coverage for the contractual liability is limited to "incidental contracts" only. A separate contractual liability insurance policy can be obtained to extend the contractual liability coverage for the liability expressly assumed under a written contract or an agreement.

An effective implementation of a liability loss control program requires a strong commitment from management. A successful program helps reduce direct and indirect costs of liability issues and helps strengthen the bottom line of the company's balance sheet.

References

1. Dekowski, Daniel J., CSP. *Insurance Engineering: The Secret to Profitable Underwriting in the Property Casualty Insurance Industry.*
2. Malecki, Donald S., James H. Donaldson, Ronald C. Horn. *Commercial Liability, Risk Management and Insurance*, Volumes I and II.

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