



Leaderschoice
INSURANCE SERVICES

Leaders News Alert

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Stress 'Injuries'

PTSD Claims a Growing Workers' Comp Problem

MORE WORKERS are filing workers' comp post-traumatic stress disorder claims from events that they experienced on the job.

These events will typically be something traumatic like witnessing a violent event while on the job or the aftermath of a horrific accident – but not always.

Most recently, the Connecticut Supreme Court held that a Federal Express Corp. driver diagnosed with PTSD in part due to his manager's demands and stress of a really bad day is eligible for workers' compensation benefits. In that case, *William D. Hart vs. Federal Express Corp. et al.*, the court upheld 47 weeks of temporarily total disability that had been awarded by the state's Workers' Compensation Review Board.

Increasingly, insurers have been denying these claims only to be thwarted by workers' compensation appeals boards or higher courts

when the cases are appealed. Courts are increasingly siding with workers and awarding them disability benefits.

For the most part, PTSD claims are filed by police officers or other first responders, but increasingly, employees that witness a violent crime or a horrific accident while on the job are starting to file workers' comp PTSD claims.

Many states, but not all, allow workers' compensation claims based on PTSD. In order to qualify for benefits, a worker must have experienced or witnessed a traumatic event while acting in the scope of employment, and then suffer PTSD symptoms that interfere with the ability to work.

In many cases, PTSD symptoms may not appear until months or even years after the trauma. Many claimants say the symptoms are so severe that they cannot perform their jobs properly, and they may take long periods off from work.

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Examples of PTSD Claims

- A police officer, firefighter or emergency medical technician responds to a horrific or gruesome situation.
- A construction worker observes a co-worker's serious injury or death.
- A teacher witnesses a school shooting.

The individual must also receive a formal diagnosis of PTSD from a psychiatrist or psychologist.

PTSD Symptoms

PTSD symptoms can include:

- Flashbacks
- Heightened startle response
- Depression
- Anxiety
- Irritability
- Cognitive decline
- Nightmares
- Physical symptoms such as headaches, ulcers, nausea and fatigue



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Business Interruption

Does Insurance Cover Partial Shutdown?

WHAT HAPPENS if your business suffers property damage or a supply chain disruption and is forced to stop operations either fully or partially? Will your insurance cover the work stoppage or slowdown?

It is important to understand how your insurance can protect you from the resulting financial loss. In addition to potential recovery for property damage from your property/casualty policy, you may be able to recover lost revenue from your business interruption coverage.

If your operations are disrupted – completely or partially – the language of your policy will determine if, and for how long, your insurance company will cover the loss.

In the best scenario, your insurance should cover income loss not only when operations are completely shuttered, but also when your business is partially suspended.

Historically, many business interruption provisions required a “necessary suspension” of operations. The problem is that these older policies and forms did not define “suspension” or state whether a complete shutdown was necessary. Courts have wrestled with this issue, and have often come down on the side of a “complete shutdown.”

The precedent in California is the case of *Buxbaum vs. Aetna Life & Casualty Co.*, which held that

a “necessary suspension” of operations “connotes a temporary, but complete, cessation of activity.”

In this case, the court said that business interruption coverage for a law firm was not triggered because there was no complete cessation of operations when evidence showed that its attorneys

continued to bill hours following a water damage incident in its offices.

The key here is that if “suspension” is not defined in a policy, the policyholder will likely not recover lost income due to a partial cessation or slowdown of business.

The catch-22 in this type of interpretation is that the business interruption policy will usually include a clause obligating the policyholder to mitigate losses.

Slowdown coverage in new forms

In light of other states’ court decisions that were similar to the California case, the industry has developed new forms that also cover slowdowns.

One such form is the Insurance Service Office-approved “Business Income (and Extra Expense) Coverage Form.” It was updated to define “suspension” as “[t]he slowdown or cessation of your business activities.”

Fortunately, most insurance companies use forms that affirmatively state the policy “shall cover the loss resulting from complete or partial interruption of business.”

If you are renewing your business interruption policy or purchasing a new policy, ask us if the form the insurer uses includes the above language. If not, we can find an insurer that includes such wording.

That specific language can ensure that you get paid for any lost business income due to a partial shutdown of your operations. ❖

HAVE QUESTIONS ABOUT BUSINESS INTERRUPTION INSURANCE?

Call us to learn more

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Be Proactive, Not Reactive, with Worker Trauma Cases

Defending PTSD claims

Under workers’ compensation regulations:

- The employment must be the “predominant cause” of the employee’s claim.
- The claim must not arise from a company’s “good-faith personnel issue.”
- Psychiatric injuries can arise from a specific, traumatic, event-triggering PTSD.
- Psychiatric injury can be compensable if the worker has a serious physical disability and has been employed at least six months.

If you are faced with a stress or PTSD claim, Safety National Insurance Co. recommends that:

- When you receive the first report of injury, reach out and to the injured worker immediately. Sometimes the issue may be a misunderstanding or they may just want someone to care.
- Be proactive, not reactive, with trauma cases. If this is a situation that would cause you traumatic stress, it is probably causing the injured worker traumatic stress.
- You consider your “confirmation bias” and other biases when collecting statements.
- You document reactions to personnel actions. ❖





Insurance Management

Filing Late and Other Ways to Have a Claim Rejected

ONE OF the biggest mistakes you can make if you incur damage to your business premises is to wait too long before filing the claim with your insurer.

The owners of Dallas Plaza Hotel learned this the hard way last month when a U.S. Circuit Court of Appeals held that the business had waited too long to file a claim with its insurer after suffering hail damage in July 2009.

The court ruled that because the hotel had waited more than 19 months to file the claim, it was impossible for the insurer, American Insurance Co., to ascertain exactly when the damage had occurred.

The hotel's property policy required that the insured make "prompt notice" of any claims.

American Insurance rejected the claim when it received it in October 2011, saying that there had been so many hailstorms in the area before and after July 2009 that it could not determine what caused the damage or when the damage occurred and, specifically, whether it had occurred within the policy period, which expired in September 2009.

Believe it or not, this is a common problem for businesses and the lesson from this case is that you should inform the insurer as soon as possible after incurring damage that may be covered by your insurance policy.

It is one of many mistakes business owners make in filing claims. The following are surefire ways to risk having your claim denied or disputed by your insurance company:

Not contacting your insurer immediately.

Many business owners fail to contact the insurer on time and risk a situation similar to that experienced by the hotel in Dallas.

Failing

to document the damage.

Take pictures and itemize everything that was damaged. Often, you will have to make repairs immediately to prevent additional damage, or move machinery to a new location. If so, be sure to photograph the original scene to document how it was before you started your clean-up effort. Also take photos of any repairs you make.

Not keeping damaged goods.

If your business clean-up includes removal of items such as water-damaged merchandise, flooring or insulation, keep it all, even if it has to pile up in the parking lot. The damaged materials are all evidence of the impact of the disaster on your business.

Not appealing an insurer's low estimate.

After the claims adjuster inspects the damage the insurance company will give you a damage estimate. If you think it's too low, you can appeal. We can help you if you feel the estimate is too low.

Some businesses will hire an outside adjuster to make a second estimate and then the claim will go to mediation for a final resolution.

Not reading your policy.

You should understand exactly what your policy covers. For the most part, commercial property policies will not cover flooding or earthquake damage. That kind of coverage will often require a separate policy or rider.

Not being prepared.

If your business has suffered damage, you'll be better off if you know what to do in advance. Some advance steps you can take are:

- Reviewing your policy to make sure you have adequate coverage.
- Knowing where your insurance policy is kept.
- Keeping an extra copy of the policy off premises or in a safety deposit box.
- Having our telephone number and e-mail address in the contacts on your smart phone, so you can call us immediately if you suffer a claim. ❖



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Earthquake Insurance

As Risk Rises for Mega-quake, Premiums Fall

THE RISK for a massive earthquake of magnitude 8.0 or greater has increased, according to the U.S. Geological Survey.

The risk of that kind of mega-quake occurring in the next three decades is now 7%, according to the survey, which just last year released a report that increased the threat level from 4.7%.

It has raised the threat level due to a better understanding that quakes are not limited to separate faults and that one can start on one fault and jump to others, resulting in multiple faults snapping at once in a giant mega-quake.

Another study released by a California State University at Northridge professor of geophysics, Julian Lozos, predicts the high likelihood that a major quake could start on the San Jacinto fault and continue on the San Andreas fault, California's longest and most dangerous fault line.

Insurance

If your business is operating in an area that is at risk of a quake, you should seriously consider earthquake insurance. Currently, premiums for coverage are the lowest they've been in years, while the risk of earthquakes has increased.

Earthquake coverage is purchased as an endorsement to the standard business owner's policy. The endorsement covers damage caused by shaking during an earthquake, including structural damage and the damage to property.

Depending on the policy, lost business income caused by an earthquake may also be covered. Coverage only begins when damage has exceeded your policy's deductible.

Earthquake insurance policies often have high deductibles – ranging from 2% to as high as 20% of the value of your building, depending on its location, age and condition.

EARTHQUAKES AND YOUR BUSINESS

PLANNING FOR how you will respond during and after an earthquake, and taking steps now to reduce potential damage, is crucial to a successful and speedy recovery. Consider:

- Developing a business continuity plan.
- Conducting an audit of general earthquake vulnerability and a hazards risk assessment.
- Establishing an operations contingency plan.
- Conducting a non-structural assessment of your business, including inventory.
- Holding regular drop, cover and hold-on drills for employee safety.
- Encouraging employees to have family plans and emergency kits.
- Seismically retrofitting buildings or occupying/renting buildings that are built to earthquake code.
- When looking for a new site for your business, consider risks of liquefaction and proximity to faults, transportation, power and water.

Want more information?

Call Us **866.211.2123**

