

Insurance Buyers' News



MARKETING ASSOCIATES INSURANCE AGENCY, INC.
MARKETING ASSOCIATES FINANCIAL SERVICES & INSURANCE AGENCY, INC.
TELAMON TECHNICAL SERVICES, LLC

150 Wells Avenue, Newton, MA 02459-3302
Telephone: 617-964-5340 • Facsimile 617-965-1843 • www.telamonins.com



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New Federal Electronic Discovery Rules Could Affect IT Procedures

Ninety percent of business messaging now occurs on e-mail, instant messaging and voice mail, according to *Workforce Management* magazine. Now that the paper trail has turned to bits and bytes, there are implications for your IT program.

New federal rules for electronic discovery of documents went into effect on December 1 for civil lawsuits, under revisions to Federal Rules of Civil Procedure. The new rules require the parties involved in civil litigation to meet within 30 days of a case's filing to agree which electronic documents are fair game for discovery, or the pre-trial exchange of information by parties in a lawsuit. The rules are designed to reduce the cost of electronic discovery, as well as prevent the destruction of electronic records that could have bearing on a case.

Since personal computers have become common, discovery

costs have jumped. One study found that the cost of discovery represents approximately 50 percent of the litigation costs in all cases, and as much as 90 percent of the litigation costs in the cases where discovery is actively employed. A "cottage industry" of forensic specialists has emerged with the sole purpose of assisting law firms meet their electronic discovery obligations.

Since the average personal computer hard drive today can easily store 60 gigabytes of data—or 60 stacks of paper 85 feet tall—producing this information for trial can become time-consuming, burdensome and expensive. Developing case law on discovery of electronic-

ly stored information has helped provide guidance, but it is inconsistent and incomplete. The new rules will provide consistent guidelines nationwide and prevent the parties in a case from using extensive discovery as a blunt weapon.

The new rules will: (1) require parties to give early attention to electronic discovery, including the form of production, preservation of information and problems reviewing electronic information for privilege; (2) relieve parties from searching for inaccessible electronic information, e.g., information on backup tapes; (3) retain privilege protection for documents inadvertently disclosed; (4) require parties to

The Importance of Disaster Planning

Disaster planning is extremely important, but management needs to go beyond planning and frequently practice what employees should do during a disaster. Regular drills and exercises will help employees prepare for unexpected events.

- ✱ Coordinate and practice evacuation and other emergency plans on a regular basis
- ✱ Drills should be conducted on both announced and unannounced bases
- ✱ Conduct regularly scheduled education and training seminars to provide employees with information, identify needs and develop preparedness skills
- ✱ Include disaster preparedness training in new-employee orientation programs
- ✱ Do tabletop exercises with employees and discuss how each would react to emergency various scenarios
- ✱ Schedule drills with local emergency departments
- ✱ Practice evacuating and sheltering—have all employees walk the evacuation route to a designated area where procedures for accounting for all employees, guests and residents are tested
- ✱ Evaluate and revise processes and procedures based on lessons learned in training and exercise
- ✱ Always keep written training records of all disaster training and drills.



Global Warming: Insurance Considerations

Ninety percent of respondents to a Pew Center survey said they believed the federal government will begin regulating greenhouse gas emissions sometime in the relatively near future. More than two-thirds of these respondents (67 percent) think regulation will begin between 2010 and 2015. Companies that fail to reduce their emissions could have insurance and other loss exposures.

Only recently have mainstream media begun to focus on the problem of global warming. But portions of the insurance industry have recognized the hazards of climate change since the early 1970s, when Munich Re published a report linking climate change to increased risk of flooding. Climate change will likely affect insurers earlier—and more dramatically—than many other industries. In fact, Swiss Re estimated that total insured property and business interruption losses due to natural catastrophes in 2005 reached \$85 billion.

That \$85 billion is part of an upward trend. The United Nations Environmental Program reported that worldwide economic losses from catastrophic weather events rose tenfold between the 1950s and 1990s, even when accounting for inflation. Part of this trend stems from societal changes, such as increased population, particularly in vulnerable areas, and increased wealth. However, climate changes, such as increased flooding and other weather-related changes, account for some of the increase in losses.

The Earth's average surface temperature, which already increased 0.6 centigrade degrees during the 20th century, will likely increase 1.4 to 5.8°C. over 1990 levels by 2100, predicted the Intergovernmental Panel on Climate Change. Some of the changes this could trigger include:

- Increased “frequency and severity of natural catastrophes,” according to Munich Re. The reinsurer predicts natural catastrophes to increase to 800 or more per year

by 2015, from approximately 650 in 2004. Ninety percent of these catastrophes will be weather-related.

- More intense tropical storms. Climatologists have found a link between increased intensity of tropical storms and rising sea surface temperatures, but some say rising temperatures will not affect frequency of storms.
- Changes in longstanding weather patterns—i.e., hotter, drier weather in some areas and wetter weather in others, and greater variability in weather patterns in a given location.
- More frequent/extensive floods, as warmer temperatures melt snowpack earlier in the

season, while the ground is still saturated.

- Coastal inundation, due to rising sea levels.
- Increased incidence and spread of diseases formerly found only in tropical areas, such as malaria, West Nile virus, etc.

How climate change affects your business will depend on a lot of variables: your business type, location(s), severity and type of climate change and what actions you take to mitigate the effects of change. Although any estimates are little more than educated guesses, the Pew Center predicts that climate change will negatively affect agriculture, energy and food sectors of the U.S. economy, as well as the mortality and morbidity of the American workforce.

Property insurance

A warming climate could increase likelihood of property damage, according to a report in *Risk Management Magazine*. Specific problems include:

- Higher temperatures, which can cause shrinkage of thermal breaks in windows and contribute to mold growth.
- More lightning and lightning-related losses due to higher temperatures.
- Higher rainfall, which could lead to water damage, flooding and landslides. (Note: Most U.S. property insurance policies

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Insuring a Home-Based Business

Nearly 7 million self-employed people worked at a home-based business during 2004. These people have special insurance considerations.

In 2006, the number of self-employed business owners was projected to reach 11.6 million. Nearly 7 million of these self-employed people worked at home during 2004, the last year for which figures were available, according to the U.S. Bureau of Labor Statistics.

The broader availability of wideband or wireless Internet access and faster, cheaper computers have made working at home an increasingly viable possibility for millions of entrepreneurs. And unlike many the home-based businesses of the past, which tended to be small, part-time operations, some of today's home-based businesses are thriving, multi-million dollar operations.

So, if you are considering going out on your own, check your insurance coverage before beginning a home-based venture. Your homeowners policy probably does not cover losses to computers and other business-related equipment or records, nor will it pay for lost income and "extra expenses," as a business property policy can.

Relying on your homeowners insurance can leave you with big gaps in your liability coverage, too. Most homeowners policies exclude liability coverage for "business pursuits."

Your insurance options

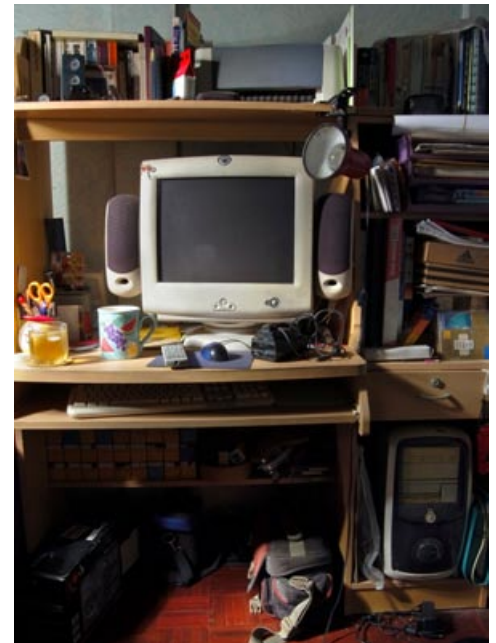
Adding an endorsement to your homeowners policy: The endorsement HO 04 42, "permitted incidental occupancies," extends your policy to include certain types of businesses. It also increases the limit on furnishings, supplies and equipment from \$2,500 to whatever your policy's Coverage C limit is. However, it won't cover liability claims that occur outside the home. Insurers also offer

other endorsements, including coverages for those who run home day care centers and for businesses that gross less than \$5,000 per year. Any full-time business will likely require insurance beyond that available in a homeowners policy.

Buying separate business policies for all your business insurance needs: You can also cover your home-based business by buying separate policies for specific coverages. Insurers can provide a choice of property, general liability and business income policies, so you can select the individual coverage(s) you need. One example would be a separate policy for your computer. Depending on the policy, you could get your computer replaced for whatever it's worth at the time of loss. According to Barbara Brabec, author of *Homemade Money*, "your computer should be insured separately for that reason."

Buying a "package" policy: A third option is a "package" policy, which combines liability and property coverages. Make sure, though, that the package doesn't give you "coverage overkill"—more coverage than you really need at more than you need to pay. Today, many insurers offer "entrepreneur" packages designed specifically for small, home-based business enterprises.

Workers' compensation coverage: Most states require workers' compensation for all employees, but make it elective for sole proprietors, partners, employed spouses or certain classes of corporate officers. If you employ anyone, even on an independent contractor basis, you could have workers' compensation exposures if that contractor becomes injured and claims he or she should have been classified as an employee. A minimum premium



policy can give you protection and peace of mind—please call us for more information.

No matter what type of home-based business you have, we can meet your insurance coverage needs. Please call our office for more information. ■

Get your home-based business off to the right start! If you're just starting a home-based business, you'll want to check the following:

- ✓ **Local zoning requirements.** Many towns or cities restrict the use of residences for business use by putting restrictions or limitations on traffic, parking, signage, number of employees, retail sales or hours, or storage of materials.
- ✓ **Employer ID number requirements.** Does your business need a federal tax identification number? Check the Internal Revenue Service's Web site at www.irs.gov/businesses/small/article/0,,id=98350,00.html to see.
- ✓ **Business licenses.** Most states and some cities require businesses to obtain a license. See the Small Business Administration's site, www.sba.gov/hotlist/license.html, to link to information on licensing in your state.



agree on the form of production of electronic information or present the issue promptly to a judge for determination; and (5) limit sanctions for loss of electronic information as a result of routine operation of computer systems, e.g., automatic purging of e-mails.

To be ready to comply with the rules, a company will not have to produce all electronic documents it ever created; it simply has to be prepared to produce those it has retained. This means creating an inventory of existing electronic documents, where they are stored and their formats.

It also means that IT managers and legal counsel should develop a policy for electronic record retention, including e-mail and IM logs, and consistently follow through. For example, if your policy calls for the destruction of email stored on company servers after a year, you would not be expected to produce emails older than that during discovery.

Your policy should also address employee communications that do not take place on corporate systems, including Blackberries, laptops, instant messaging and Web-based e-mail. Some companies are looking at ways to capture these documents for retention, or prohibit the use of these communication methods for company business.

Failure to comply with the discovery rules could bring huge fines. According to a report in *ComputerWorld*, a judge fined Morgan Stanley \$1.5 billion in May 2005—for failing to preserve information relevant to a case. ■

exclude coverage for flooding or landslide, but you can obtain this coverage through the National Flood Insurance Program.)

- ✱ Increased wind speeds, leading to more wind-related damage.
- ✱ Loss of business income due to damage on your property or on another “dependent” location on which your business depends. This could be a key supplier or an anchor store that draws business to your retail location.

D&O Liability

D&O insurers are becoming increasingly concerned with potential shareholder suits or regulatory actions over issues related to global warming. If a corporation faces possible losses due to climate change yet fails to disclose or take action to limit those losses, shareholders could file suit for resulting loss of their shares’ value. An article in *Business Insurance* magazine cautioned readers that applicants for D&O insurance should be prepared to answer the following questions:

- ✱ “Does a company allocate responsibility for the management of climate-related risks? If so, how does it do so?”
- ✱ Is there a committee of independent board members addressing the issue?”
- ✱ What progress, if any, has the company made in quantifying, disclosing and/or reporting its emissions profile?”
- ✱ How well has the company planned for future regulatory scenarios?”

D&O policies exclude coverage for pollution-related claims; however, most have an exception for “unindemnifiable,” or nonreimbursable, expenses, which could apply to shareholder derivative suits. At this time, the U.S. Environmental Protection Agency does not consider carbon dioxide, the primary culprit in global warming, a pollutant, so the exclusion might not hold up.

Insurer Initiatives

Many insurers are looking at ways to minimize their own impact on global warming, as well as reducing exposures to increased claims due to climate change. Developments to look for include insurance policies that give insureds premium discounts for reducing greenhouse gas emissions and for using “green design” in new construction or in rebuilding damaged properties; increased use of public-private partnerships, such as Florida’s Hurricane Catastrophe fund, to encourage insurers to write insurance in at-risk areas; “carbon-trading” incentives; and initiatives to encourage stricter building codes and the retrofitting of older buildings to better withstand forces of nature.

For more information on how climate change could affect your risk exposures, please contact us. You can also refer to the Pew Center study, *Getting Ahead of the Curve: Corporate Strategies That Address Climate Change*, for information on steps you can take to reduce greenhouse gas emissions. See www.pewclimate.org/docUploads/PEW%5FCorpStrategies%2Epdf. ■

Do Employees Have Coverage for Electronic Devices in the Car?

Do employees have coverage for electronic devices in their cars? Many employees use portable electronic devices—such as cell phones, laptops, global positioning systems (GPSs) and other electronics—in their cars. Theft of this type of consumer item constitutes more than a quarter of this country’s 61.9 million larcenies, according to the FBI.

Many personal auto policies restrict coverage for electronic devices in cars. The 2005 ISO personal auto policy (PAP) excludes losses to electronic equipment that reproduces, receives, or transmits any type of audio, visual or data signal. The exclusion does not apply to permanently installed electronic equipment, yet many of the popular GPS navigation

systems are portable models with quick release features. The PAP does not cover any type of portable device.

The ISO PAP also places a \$1,000 limitation on any electronic equipment permanently installed in the auto in locations not used by the auto manufacturer for installation of this equipment. Many add-on GPS systems can be installed in another part of the car.

If your company buys electronics for employees to use in their jobs, determine whether the company will cover them or whether you will require the employee to buy coverage. In this case, the employee can buy an excess electronic equipment endorsement for his/her PAP, which can increase the \$1,000 coverage limit for electronic devices.

The company’s business auto coverage likely will not apply to devices installed in employee’s cars. Even if you carry insurance for non-owned autos, it will only cover you for liability claims. You can cover electronic devices under separate “floater” policies. For more information, please call us. ■