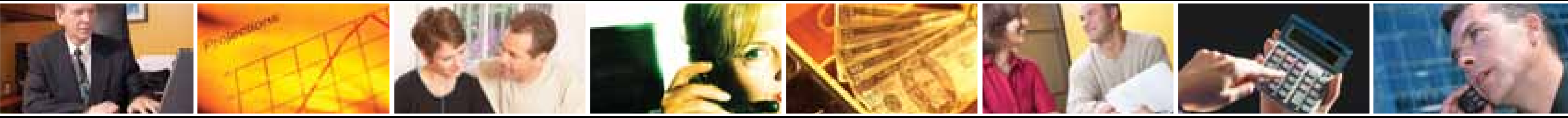
Volume 4 Number 1

Risk Monitor



Avoid Lawsuits When Laying Off Workers

With the U.S. economy in recession, companies are trying to make up for declining sales by reducing expenses. Workforce reductions, though they may improve short-run profits, may also cause long-term problems if the firm does not handle them with care. Angry former employees may look for justification for legal action. The employees who remain will take on extra work with no additional compensation, while they deal emotionally with the loss of colleagues and fear that the job cutting will eventually hit them. Consequently, companies must approach layoffs with caution.

The company must first determine whether a layoff is the best option. While it may quickly reduce costs, it may also cause the company to dismiss valuable workers. This will hurt long-term productivity, lower the morale of the survivors, and wipe out valuable institutional knowledge. There is also a risk that a layoff will unfairly affect older or minority workers, which could lead to discrimination complaints. Therefore, the company should look at alternatives such as hiring and wage freezes, adjustments to employee benefits, not replacing workers who leave or retire, and job sharing.

If the company decides that it must reduce its workforce, several careful steps are required;

- Establish a specific goal for the layoff to achieve, such as a dollar amount of savings or number of positions.
- Identify those job functions and skills that it will need to operate successfully after the layoff.
- Set a timetable so that the reduction has a clear end.
- Comply with federal and state labor laws.
- Determine which jobs are unnecessary and eliminate them.

When determining which employees to dismiss, the company may legally use criteria such as length of service with the company, the necessity of a certain job classification, employee status (i.e., part-time or temporary), or employees' performance records. Management should review candidates for dismissal to ensure that the cutback does not disproportionately impact classes of employees protected by law. If managers can find no other compelling business reason for terminating those employees, they must seek out alternatives.

Once managers have made selections and the decision to proceed, they must inform the affected workers in a professional manner. They should be able to clearly explain the reasons for the action; workers' entitlement to benefits such as severance, health coverage, and others; and post-employment services available to the workers, such as outplacement. The workers may express emotions ranging from stunned silence to rage; the managers must be prepared to deal with their reactions in a businesslike manner. Remaining employees will have concerns about their own futures and the firm's outlook. Management should, to the extent possible, explain the reasons for the layoff, the likelihood of additional job cuts, and the business goals the firm seeks to achieve through the layoffs.

The company must take particular care when the layoff involves older employees. Severance packages usually require the employee to waive his right to press a claim under federal law. However, regulations impose procedural requirements that an employer must meet before a court will consider the waivers valid. Companies must take special care to meet those requirements.

Shrinking a company is an unpleasant prospect that no manager relishes. Employee lawsuits may well result from a workforce reduction. However, if the firm handles the action with care and sensitivity, it can make such claims less likely and will be in a better position to defend itself against claims that do arise.

Welcome to the Elliot Whittier Insurance Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.

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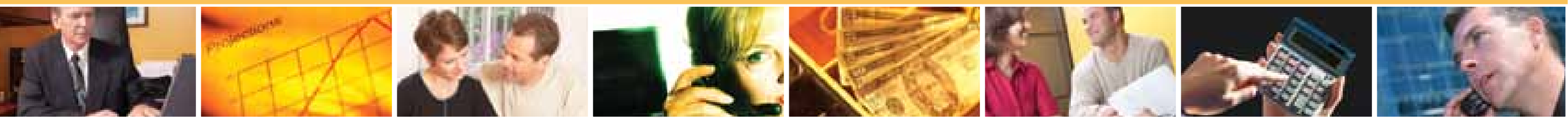


New Building Codes Can Leave You Under-Insured

The owner of a commercial building may believe that replacement cost insurance coverage on the building is sufficient to protect her from financial loss. After all, she took the insurance agent's advice and bought enough insurance to pay for repairing or replacing the building if it were completely destroyed. However, this may be a false sense of security, particularly if the building is an older one. While the building may not have changed greatly over the years, local building codes undoubtedly have. Even codes in effect at the time the building was constructed may affect your insurance coverage.

Many local governments have ordinances that require the demolition of a building when more than 50 percent of the building has been damaged. These ordinances require the reconstruction of the building in accordance with current building codes. Zoning and land use codes may have changed over the years prohibiting the reconstruction of that type of building at the same site. This could require the owner to rebuild somewhere else or with a much different building design. Laws and codes requiring buildings to be easily accessible to handicapped people may affect rebuilding if the building previously lacked ramps, doors that can be opened remotely, wheelchair-accessible toilets, and other accommodations.

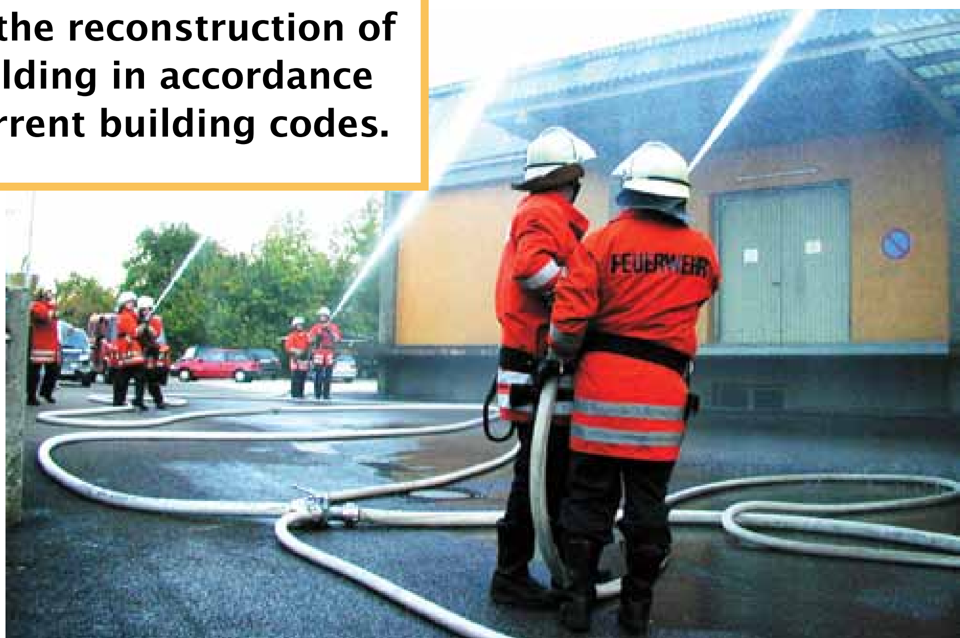
Many local governments have ordinances that require the demolition of a building when more than 50 percent of the building has been damaged. These ordinances require the reconstruction of the building in accordance with current building codes.

All of these requirements may significantly increase the cost of rebuilding. Unfortunately, standard commercial property insurance policies provide very little coverage for these higher costs. Most will pay either 5 percent of the amount of insurance on the building or $10,000, whichever is less, for the increased cost of construction resulting from a local ordinance or law. Therefore, the amount of insurance available for a building insured for $150,000 is $7,500; the amount available for a building insured for $500,000 is $10,000. The costs of demolition and rebuilding up to new codes or at a new location can quickly use up this relatively small amount.

Building owners should consider buying additional insurance to cover this possibility. Many insurance companies offer ordinance or law coverage for an additional premium. This coverage will pay for the additional costs of demolition and construction unless the costs result from failure to comply with previous ordinances or from the release of pollutants. Included are three distinct coverages for the specified building:

- **Coverage A -** Loss to the undamaged portion of the building
- **Coverage B -** Cost of demolishing the undamaged portion of the building
- **Coverage C -** Increased cost of construction or repairs to comply with ordinances or laws

The amount of insurance available under Coverage A equals the amount of insurance covering the entire building. Separate amounts apply to Coverages B and C. There is no coverage if the damage results from a cause that the policy excludes. For example, most policies do not cover flood damage, so the policy will not pay if the law requires the owner to demolish the building after a flood. Also, the insurance will pay only the amount necessary to meet the minimum requirements. The insurance will not pay for the cost of exceeding requirements during rebuilding.



This insurance covers the owner only for the cost of repairing or replacing the building, not for income lost during additional reconstruction time. Separate coverage is available for this exposure.

An insurance agent can advise building owners on the types, amounts, and costs of coverage they may need to meet updated codes. Whether or not they ultimately decide they need the coverage, they should give it careful consideration. The last thing any owner wants is a surprise uninsured expense after a disaster.

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Understanding Waivers of Subrogation

Suppose an air conditioning contractor, while installing a system for a new industrial building, has an accident. Another contractor's employee on the job site suffers injuries when the AC contractor's scaffolding collapses and falls on top of him. The injured worker sues the AC contractor and the project owner. The project's contract included a requirement that the contractor assume the owner's liability for any accidents arising out of the contractor's work. Consequently, the contractor's general liability insurance company pays the injured worker for both the contractor and owner's shares of the damages. The insurance company, however, has determined that the owner was twenty percent responsible for the accident. It files a claim with the owner demanding some of its money back.

The insurance company's action is entirely legal. Many project owners and general contractors, wanting to avoid this situation, insist that their subcontractors agree to a waiver of subrogation.

Subrogation is a legal principle in which a person who has paid another's expenses or debt assumes the other's rights to recover from the person responsible for the expenses or debt. For example, if someone hits your car in a parking lot and causes significant damage, your insurance company will pay you for the damage (assuming you bought collision insurance,) then recover the amount of its payment (subrogate) from the other driver (or, more commonly, from the driver's insurance company.) Subrogation holds ultimately responsible the person who should pay for the damage.

Owners and general contractors want to transfer their liability to subcontractors, to the extent that they can. Therefore, contracts often include a waiver of subrogation agreement. In such an agreement, the subcontractor promises not to pursue recovery from the other party. That agreement might bind the subcontractor's insurance company, depending on the type of policy and its terms.

A standard commercial general liability policy forbids the policyholder from doing anything to impair the insurance company's rights after the loss occurs. This implies that a waiver of subrogation agreed to before a loss binds the company. Also, the sub's policy may protect the other party if it names him as an additional insured. Under common law, an insurance company may not subrogate against its own insured. To remove any doubt, the sub should ask the company to add an endorsement applying a waiver of subrogation to the person or organization named in it. Insurance companies vary on the amount of premium they charge for this; some make no charge at all.

The standard business auto insurance policy has language similar to the general liability policy. Unlike GL insurance, there is no standard waiver of subrogation endorsement for auto insurance. Some insurance companies may offer their own versions of such an endorsement. Again, premium charges will vary.

Workers' compensation policies require an endorsement whenever a waiver of subrogation is desired. This endorsement may apply on a blanket basis to all parties with whom the insured has written contracts requiring waivers. Alternatively, it can apply only to the party listed on its schedule. The insurance company may charge up to two percent of the policy premium for blanket coverage or two to five percent of the project's premium for individual coverage.

Commercial property and inland marine insurance policies vary as to whether they permit waivers of subrogation even before a loss.

In all cases, a contractor or building tenant who is required by contract to provide such a waiver should check the relevant insurance policies. Policy changes should be requested if it is unclear whether they permit pre-loss waivers. The firm should consult with an insurance agent on all insurance-related contractual matters to ensure that the proper coverage is in place.

Elliot Whittier Insurance hires Matthew R. O'Keefe as Commercial Lines Sales Executive

Elliot Whittier Insurance has hired Matthew R. O'Keefe as Commercial Lines Sales Executive. O'Keefe will round out Elliot Whittier's existing commercial lines sales team of Steven P. Roy, CIC, Wayne Guyer CPCU, CIC, and Andrew Bierschied, CLCS.

"Matt brings impressive, broad based experience to the table. He has an outstanding record of success in sales, customer service and problem solving. He will be an asset to the entire organization as well as to our clients." said Paul Roy, CPCU & principal at Elliot Whittier.

O'Keefe brings with him 3 years experience as Vice President & General Manager of O'Keefe Chevrolet, Inc, where he was also Sales Manager for 3 years prior. O'Keefe graduated Boston College '99 and holds a Bachelor of Arts Degree.

Matt is married, has 2 children, and lives in Danvers, MA. Matt is a member of various professional & civic groups, such as Rotary International, Catholic Charities North where he is on the Board of Directors, and the Boston College Alumni Club. Matt supports various charities such as the Mass Multiple Sclerosis Society, the Ipswich Family YMCA, and the Welles Crowther 9/11 Trust.

Elliot Whittier Insurance names Steven P. Roy as President & CEO

The Elliot Whittier Board of Directors has named Steven P. Roy as President and CEO, announced outgoing president, Paul Roy.

“It is with great pride that I announce the promotion of Steven P. Roy, CIC, to the position of President and CEO of Elliot Whittier Insurance. Steve’s been with us for almost 17 years and, for a number of years, been responsible for much of our growth as a salesman, and in recent years has participated in the management of Elliot Whittier. In the past four years Steve has also functioned as the liaison with some of our key Carriers that include MiddleOak, Travelers, Peerless and the Hartford.”

Steve is married, has 2 children, and lives in Marblehead, MA. Steve is President of the Winthrop Rotary Club, serves on the board of East Boston Social Centers as Treasurer, and is on the Peerless Insurance Agents’ Advisory Council. Steve supports various charities such as the Food Pantries in Winthrop and Marblehead and also coaches his son’s hockey and baseball teams. Steve graduated Fairfield University ‘87 and holds a BA Degree in Philosophy.

“Paul will maintain involvement with the agency on many levels. His leadership and vision for Elliot Whittier has been remarkable. I am quite honored to be handed the reins, and hope to continue and enhance our fine tradition” said Steve.

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