



# b ``` (PARED!) ```

[ the business interruption e-source ]

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BUSINESS INTERRUPTION CONSULTANTS, INC.

## ARMY CORPS HELD LIABLE for Katrina Damage

The federal government may be subject to billions of dollars in claims after U.S.

District judge, Stanwood Duval ruled on November 18th that the Army Corps of Engineers' failure to properly maintain a navigation channel led to massive flooding from Hurricane Katrina. The judge awarded seven plaintiffs \$720,000, but eventually the government may be forced to pay much more. The ruling will likely allow more than one hundred thousand other individuals, businesses, and government entities a better opportunity for claiming damages.

Duval sided with six residents and one business who argued the Army Corps' shoddy oversight of the Mississippi River/gulf outlet led to the flooding of New Orleans' Lower 9th Ward and neighboring St. Bernard Parish. He said, however, the Corps could not be held liable for the flooding of eastern New Orleans, where two of the plaintiffs lived.

(continued on page 2)



Water being pumped from New Orleans' flooded Lower 9th Ward after Hurricane Katrina.

PHOTO BY: CHARLIE RIEDEL, AP

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1740H Dell Range Blvd., #300  
Cheyenne, Wyoming 82009  
PHONE: 561.818.9194  
FAX: 307.634.9497  
EMAIL: info@bisimplified.com  
WEB: www.bisimplified.com

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showoffgraphics@mac.com

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**“Forewarned, forearmed;  
to be prepared is half the victory.”**

~ Miguel de Cervantes Saavedra

**“Though no one can go back and make a brand new start, anyone can start from now and make a brand new ending.” ~ Anonymous**

According to *Forefront*, a RIMS magazine section, the Girl Scouts are all about disaster preparedness. Wait a minute! I thought the Boy Scouts’ motto was “be prepared”.

Interestingly, the Department of Homeland Security has enlisted the girls in green and brown to help in times of natural or manmade disaster. The “preparedness patch” may be earned if they complete the required training. They must create an emergency preparedness plan for their families, learn about local alerts and warning systems, and get involved in community service. Another requirement is to learn to plan for natural disasters such as hurricanes and tornadoes. This represents a partnership between the Girl Scouts and Citizen Corps, a grassroots initiative developed by FEMA for disaster preparedness in communities nationwide.

The Girl Scouts, founded in 1912 and chartered by Congress in 1950, have played a part in past national crises. According to its website, during World War II the scouts operated bicycle courier services, invested more than 48,000 hours in Farm Aide projects, collected scrap metal, and grew Victory Gardens. Maybe the Boy Scouts should look into this since they claim to “be prepared”.

**If our kids think preparedness is important, why don’t the adults running corporations think so too?**

(continued from page 1)

The lawsuit was the first major case to go to trial against the federal government over Katrina flooding. The decision rested with Duval because a jury cannot decide a case against the federal government. Many in New Orleans have argued that the flooding in the aftermath of Katrina, which struck the region August 29, 2005, was a manmade disaster caused by the Army Corps’ failure to maintain the levee system protecting the city. Duval referred to their maintenance of the channel as “monumental negligence.”

During trial testimony, government lawyers and experts argued the levee system was overwhelmed by the massive storm, and levee breaches could not be blamed solely on the

shipping channel dug in the 1960’s as a short-cut between the Gulf of Mexico and New Orleans. The Corps had also argued unsuccessfully that it is immune from liability because the channel is part of New Orleans’ flood control system.

This ruling will likely affect the way the Army Corps does business across the country. It was the “first time ever the Army Corps has been held liable for damages for a major catastrophe that it caused,” according to Pierce O’Donnell. The plaintiffs’ lawyers would like Congress to establish a compensation fund to expedite payments to the thousands of claims. The government is expected to appeal.

# LESSONS FROM SWINE FLU (H1N1)

The virus outbreak began calmly and then quickly became a problem due to rapid transmission among the susceptible, the CDC's ineptness, and an inadequate supply of the vaccine. Risk managers need to prepare for the worst.

## **Risk Magazine suggests four key factors:**

- 1. Having a plan is not enough.** You should have been assessing your company's response to the outbreak last spring. Putting structure behind the evaluation process will almost certainly reveal insights you can use. Make sure your plan is flexible and accommodates changes.
- 2. Employees will rely on their employers for assistance.** Clear, straightforward information is essential for allaying fears and building trust. Your communications should emphasize mitigation measures that your employees can control, such as personal hygiene and staying home.
- 3. This pandemic is especially worrisome to the business community.** While the regular flu impacts the elderly, swine flu disproportionately affects younger people which is likely to cause a greater strain on the workforce. Categorize employees into four groups (this is basic to a contingency plan):
  - Essential to the work site.
  - Essential, but can work remotely.
  - Nonessential, but can work remotely.
  - Nonessential and not necessary to work remotely.

## **4. Certain groups are at greater risk.**

These folks have pre-existing medical conditions, such as diabetes, asthma, etc. The Human Resources department must be involved in the preparatory planning process because of HIPAA, and other employment laws. If they are available, some companies create a stockpile of antiviral medications, but this approach also has some risks and should be considered carefully.

Companies need to be prepared when potentially a third of their employees may not be available to work. It is a good idea to begin immediately to cross-train employees on essential functions, no matter what disaster may occur. It is no different from being prepared for a fire or tornado. Those disasters damage property, H1N1 damages people.



# RAGING ROB

asks... when did underwriting change?

# @ ! \* ?

Years ago, insurance was a people business. It was about the bet, now it is about the computer program. Insureds trusted their agents or brokers to secure the best policy for their exposure. Underwriters tried to understand their clients' risks and bet on the possibility of a loss. There was an art to this science, and a large dose of honoring commitments. Now it is the computer's fault and agents and brokers are selling price, not protection. Premium dollars, not adequate protection dictate the policy limits, and if there are any problems, lawsuits abound.

We used to have underwriters who specialized, and were expert in, one line of business (w.c., property, casualty, marine, etc.) and could judge a risk quite accurately. Now underwriters are expected to be "Jacks of all trades" and place good bets because they have a computer program to "help" them.

Claim departments have had their ranks decimated to the "god of cost cutting". Since 1990, one third fewer adjusters must handle the missing third's workload as well as the 20% increase in claims. No wonder there is burnout, lack of customer service, and less time to work on each claim. So they rely on sharp lawyers, selective memory, and small contract print to help avoid their commitments.

**But there is a rainbow...**



Some agents and brokers are calling a halt to this craziness. They are implementing customer service goals and market differentiation programs, raising the bar on service and looking to the insurance industry to do the same. These "smart cookies" are selling protection, not cost reduction, and their customers are believing them. Maybe we will return to underwriting as an art as opposed to a computer program spitting out a number. I hope so for the sake of our industry.



# What is LOST SALES VALUE OF PRODUCTION?

## b. (INFORMED!)

[ answers to frequently asked questions ]

This coverage is for manufacturing operations and pays for the sales value of lost production when the plant is shut down. For the business income coverage, the definition of net sales states, "For manufacturing businesses, net income also includes the net sales value of production." Not all policies have this wording or provide this protection, so read your policy carefully. There is usually a deductible, like three days average daily value.

For example, in *Metalmasters of Minnesota, Inc. vs. Liberty Mutual Ins. Co.*, 461 N.W. 2nd 496 (Minn. Ct. App. 1990), a water pipe burst in the insured's clean room where it manufactured electronic components. Although it was nine weeks before the insured could restore manufacturing operations, the insured managed to fill all outstanding contractual orders by dipping into an inventory of salvaged components during the period of restoration. Thus, the insured did not lose any sales until after the nine week period of restoration, as the depleted inventory could not be refilled in time to meet ongoing orders. In the absence of any policy language that clearly established coverage for net sales

value of the goods that would have been produced during the period of restoration, the appellate court rejected the insured's business income claim.

The current ISO language eliminates any doubt about coverage for the sales value of goods that would have been produced by an insured manufacturer during the period of restoration. For manufacturers to avoid the possibility of a dispute, non-standard forms should be checked to confirm they contain similar language or some other provision that clearly establishes this point. Even if sales are made up at a later date, there are still continuing expenses and extra expenses incurred during the recovery period (see our previous article on deferred sales).

For example, a pipe manufacturer operating one shift five days a week generates one thousand feet of pipe a day with a sales value of \$2,000, or \$10,000 a week. If a covered peril interrupts operations for two weeks, there is a loss of business income of \$20,000, minus discontinuing expenses (materials and supplies) even though they are still selling out of inventory. Confusing the calculations are such things as seasonality, idle periods, inventory buildup, and new business forecasts. The point is that there is protection for manufacturers if the definition of business income includes "net sales value of production".

**REMEMBER: Replenishing inventory is not covered in the business income coverage. It is covered under the property replacement coverage.**

# b (FUNNY!)

[ a little insurance humor ]

Mall Santas put up with a lot, but this year, they are demanding protection: According to the *Sacramento Bee*, Santa is asking to be approved to receive the early H1N1 vaccine.

You really can't blame the Santas! Imagine facing down hundreds of sniffing, sneezing, hygiene-challenged kids, all of whom want to rub their germy selves on your fuzzy red suit—well, except for the ones who are terrified and crying, but that's a different Mall Santa story.

All you have to protect yourself is a bottle of hand sanitizer, and the hope that the really sick ones will stay home. That's not much in the face of swine flu.

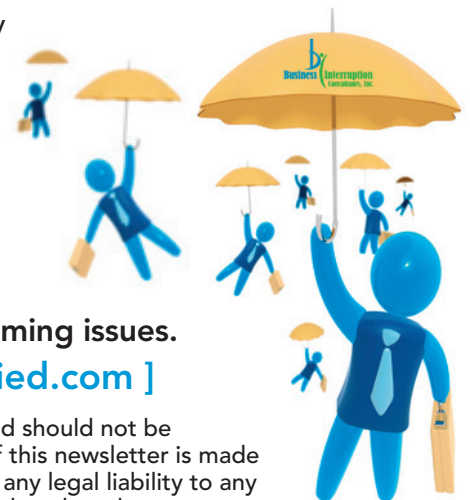
As Sacramento-based Santa, Daniel Gromer, told the *Sacramento Bee*, "Santa can't deliver toys if he's sick." We don't know if the CDC is listening, but having seen "The Year Without a Santa Claus" many times, we can say, "Amen to that!" ■

FC&S advertisement in the *National Underwriter*: Is that the jaws of a great white shark or just that loophole you missed last June? ■

[ Send us your insurance jokes for a chance to be in our next newsletter at [info@bisimplified.com](mailto:info@bisimplified.com) ]

## Get the Facts!

- "Since 1976, the EPA has issued regulations to control only five existing chemicals determined to present an unreasonable risk; five from a total universe of almost 80,000 existing chemicals," according to Lisa Jackson, administrator of the EPA, on the need for updated chemical regulation.
- 1.2% American males age 50 and over diagnosed with memory-related diseases.  
6.1% former NFL players over age 50 diagnosed with memory-related diseases.  
0.1% of American males age 30 – 49 diagnosed with memory-related diseases.  
1.9% of NFL players age 30-49 diagnosed with memory-related diseases.
- H1N1 deaths from March to August: 1,154  
MRSA, an antibiotic-resistant bacteria, deaths: 18,000  
Amount of congressional funding to fight H1N1: \$1.5 billion  
Amount of congressional funding to fight MRSA: \$16.9 million
- "There are risks and costs to a program of action, but they are far less than the risks and costs of comfortable inaction."  
John F. Kennedy



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