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[the business interruption e-source]

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BUSINESS INTERRUPTION CONSULTANTS, INC.

DUTY OF AGENT — NEW LA CASE

From 1989 until 2005, the broker consulted with and sold property and casualty insurance to the insured (a private school). Every year the broker provided a written proposal of recommended coverage and met with the insured to discuss these recommendations. From 1989 until 1999, the insured purchased \$250,000 of extra expense coverage. In 1999, the designation was changed to business income/extra expense, but the limits remained the same. For the 2003-2004 policy, the limits were increased to \$350,000. When speaking with the insured's business managers, the broker explained business income/extra expense coverage protected the school against the risk of extra expenses that would be incurred while fixing its physical damage.

As a result of physical damage caused from Hurricane Katrina that occurred in August of 2005, the school was closed for several months. The insured filed suit against the broker alleging that the broker was negligent in failing to advise the insured that business income/extra expense coverage included tuition loss. The trial court found that the insured provided a preponderance of evidence that the broker had breached the duty of care required of an insurance broker. The award to the insured was \$3,167,606, plus court costs and interest.

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The insured is a private school. The agent annually provided a limit of BI/EE (\$250,000, then \$350,000), and offered higher limits, which the insured rejected (with documentation). Because of Katrina, the school suffered a \$3,000,000 BI/EE loss. They hired an "expert witness" to testify that the agent should have used a BI/EE worksheet. The agent's point was that since they would not even buy more than \$350,000 when offered higher limits, what did it matter?!

The bottom line: The agent was held liable for failing to discuss the BI worksheet with the insured (assuming there was one), but the BI/EE worksheet would have probably saved his bacon! We keep saying it is the BI worksheet that determines the insurance need. Without one, how do you know what limit to chose?



For sending us the information for this article, our thanks go to:
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FAMILY FIRE

Many of us have talked to our families about what to do in case of a fire or other emergency. If you have not, you need to do so today. Oftentimes, we say to meet at the mailbox, but guess where the fire truck will be parked? Instead, plan to meet at a neighbor's mailbox or some other landmark out of the way of the emergency responders. Make sure the older members of your family know they are only responsible for themselves and not other family members. Also, they should wait at the meeting place as long as it takes for you to come get them. Keep everything as simple as possible and practice the drill often so the response will be automatic.

For more information on this topic:
www.usfa.dhs.gov/downloads/pyfff

SAFETY



What causes tornadoes?

Thunderstorms develop in warm, moist air in advance of eastward-moving cold fronts. These thunderstorms often produce large hail, strong winds, and tornadoes. Tornadoes occasionally accompany tropical storms and hurricanes that move over land. Tornadoes are most common to the right and ahead of the path of a storm center as it comes ashore.

Tornadoes may form during the early stages of rapidly developing thunderstorms. Tornadoes may appear transparent until dust and debris are picked up. Occasionally, two or more tornadoes may occur at the same time.

A TORNADO WATCH is issued when conditions are favorable for tornadoes to develop (often during severe thunderstorms). This does not mean that a tornado will occur, just that it is possible.

A TORNADO WARNING means that a tornado has actually been sighted on the ground or a funnel cloud has been spotted.

The safest place to be during a tornado is in a basement, under something sturdy like a workbench or strong table. If there is no basement, **go to a small interior room**

in the middle of the house, like a closet or bathroom. Stay away from outside walls and windows. **Never seek shelter in a car.**

Opening windows to equalize pressure during a tornado is ineffective in reducing damage, and adds to the risk of flying glass.

Hail often accompanies severe storms, so move cars inside a garage or carport if possible to avoid damage. Keep your car keys and house keys on your person.

If time permits, move lawn furniture and yard equipment inside so that they do not become airborne.



[For more information: www.bt.cdc.gov/disasters/tornadoes]



I thought my group insurance plan was fine until I discovered I would not collect until the whole group was sick. ■

An elderly man about to receive anesthesia is on the operating table awaiting surgery. He insisted that only his son, a renowned surgeon, should perform the operation. The father signaled to speak to his son.

"Yes, Dad, what is it?" asked the son.

"Son, don't be jittery, perform your best, and never forget that if the surgery fails and something happens to me, your mother will live with you and your wife for the rest of her days." ■

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

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**IT IS ONLY A
MATTER OF TIME**

Business owners, executives, boards, and risk managers need to start developing their disaster preparedness plan now before it is too late. The October 16th Department of Homeland Security (DHS) announcement in the Federal Register of a new proposed standard for private sector disaster preparedness has generated a great deal of interest within the Certified Professional Continuity Planning community. The DHS announcement is seen as the first tangible step in a process that will lead to the certification of company disaster preparedness. To reach this point has taken considerable time and effort. We continue to monitor the developing & emerging standards for the business continuity community.

[IT IS ONLY A MATTER OF TIME.]

Voluntary Private Sector Preparedness Accreditation and Certification Program and the Voluntary Private Sector Preparedness Accreditation and Certification Program (PS Prep) is mandated by Title IX of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the Act). Congress directed the Department of Homeland Security to develop and implement a voluntary program of accreditation and certification of private entities using standards adopted by DHS that promote private sector preparedness, including disaster management, emergency management, and business continuity programs.

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

~ Miguel de Cervantes Saavedra

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THE THREE IDENTIFIED PREPAREDNESS STANDARDS ADOPTED BY THE DEPT. OF HOMELAND SECURITY THAT PROMOTE PRIVATE SECTOR PREPAREDNESS ARE:

- Disaster Management
- Emergency Management
- Business Continuity Programs

The purpose of the PS-Prep Program is to enhance nationwide resilience in an all-hazards environment by encouraging private sector preparedness. The program will provide a mechanism by which a private sector entity (a company, facility, not-for-profit corporation, hospital, stadium, university, etc.) may be certified by an accredited third party establishing that it conforms to one or more preparedness standards adopted by DHS.

Currently, there is no comprehensive set of standards by which American businesses and other private sector entities can assess their preparedness for all hazards. Having a plan to reduce the impact of all hazards on business and protect employees can help ensure that a business is able to recover and reopen following a disaster or other emergencies.

VOLUNTARY PROGRAM

Participation in the PS-Prep program is completely voluntary. No private sector entity will be required by DHS to comply with any standard adopted under the program. However, DHS encourages all private sector entities to seriously consider seeking certification on one or more standards that will be adopted by DHS.

DESIGNATION OF PREPAREDNESS STANDARDS

Congress directed DHS to designate one or more standards for assessing private sector preparedness. The standards will be used by accredited certifying entities to evaluate and certify compliance by private sector entities with the standards adopted by DHS. Although DHS intends to select only the three identified preparedness standards at this time, it may select additional standards in the future.

As the program develops, DHS remains committed to ensuring that PS-Prep is developed and standards are selected in close coordination with the private sector and other interested stakeholders.

For further information please e-mail: PrivateSectorPreparedness@hsi.dhs.gov.

HOW TO GET INVOLVED

Private sector entities may get involved in PS-Prep by submitting comments on the identified standards, suggesting additional private sector standards to be adopted by DHS, and participating in future public meetings on the topic. Details will be posted at: www.fema.gov/privatesectorpreparedness. DHS has posted the Federal Register notice at: www.regulations.gov. Comments may be submitted to: www.regulations.gov or FEMA-POLICY@dhs.gov. (Identify Docket ID FEMA-2008-0017).

b (INFORMED!)

[answers to frequently asked questions]

MONTHLY LIMIT OF INDEMNITY: CONTINUED!

We asked for your feedback and we got it! It is encouraging to see that so many people read our newsletter. The response was overwhelming. The villagers stormed the castle with pitchforks and torches looking for the monster that proposed claims were limited to number of months chosen. It is interesting to note that the respected periodical "Rough Notes" took our position and then retracted it the next month due to reader response.

Our friends Bill Wilson of AAIBA and Bill Perkins of FAIA took us to task saying, "the only limitation expressed in the form is the selected percentage of limit."

Vincent "Chip" Boylan, SVP Willis of Maryland, and James Harrison of the Florida Insurance School, also weighed in with the same position that the only limit in the "monthly limit of indemnity" coverage was the percentage of insurance limit chosen.

Therefore we bow to the standard industry practices and the various training institutions' perception regarding no monthly limit on the payment of claims under this coverage.

PLEASE CONTINUE TO GIVE US YOUR COMMENTS AND ASSOCIATED ARTICLES ON TOPICS OF INTEREST.

WE WELCOME YOUR INPUT!

Send us your comments, questions and jokes to be published in upcoming issues.

CONTACT US AT: info@bisimplified.com [www.bisimplified.com]

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Get the Facts!

- Insured losses span a wide range of catastrophes from weather-related events such as windstorms and floods to man-made disasters such as riots and satellite failures. Outside the United States, natural disaster losses are less likely to be insured.
- Four million Baby Boomers will reach sixty-five each year for the next eighteen years (one every eleven seconds). This has led to increased interest in fixed annuities, the sales of which rose fifty percent in 2008.
- Forty-six countries have banned cell phone use while driving. In the United States, so have the following states: California, Connecticut, District of Columbia, New Jersey, New York, and Washington.
- **Top 10 list of consumer complaints:**
 1. Debt collection
 2. Auto sales
 3. Home repair/construction
 4. Credit cards
 5. Internet goods and services
 6. Predatory lending/mortgages
 7. Telemarketing/do-not-call
 8. Auto repair
 9. Auto warranties
 10. Telecom/slamming/cramming

