Identifying Your Exposures to Loss - Volume 2

In the last edition of the CALR News we discussed identifying what assets your company has to lose. In this edition, we will discuss what could go wrong or, "exposures to loss".

Assets and exposures are grouped into the following categories:

- Destruction or theft of real or personal property-Buildings, Contents, Vehicles.
- Loss of intellectual or intangible property-Reputation
- Death, disability, resignation, termination, or retirement of key employees
- Liability from torts-Your Negligence or Alleged Negligence
- Liability from contracts
- Statutory liability, including workers' compensation
- Loss of net income – direct, consequential, and contingent-Loss of a major customer
- Extra expenses as a result of damage or loss
- Decrease in value of financial assets;
- Loss from commodities pricing, interest rates, and currency fluctuations;
- Credit losses;
- Competitive losses.

Another grouping could be:

- *Assets and resources exposed to direct loss*: These would encompass physical assets that can be destroyed by perils such as fire, theft, weather related incidents and automobile accidents.
- *Assets and resources exposed to indirect loss following a direct loss*: In this instance, earnings can be lost and extra expenses incurred as a result of the destruction of property by flood, earthquake, criminal activity, hail storms or fire. The death of a key employee or loss of a key customer can also devastate the bottom line.
- *Assets and resources exposed to third-party liability*: This is a broad category encompassing all of your assets, which can be lost to third parties in payment of liability arising out of automobile accidents, acts of directors and officers, contracts and leases, and payment of benefits to employees under workers compensation laws.
- *Losses attributable to financial and market risks*: These would include declining security values, commodities losses, interest rate and currency fluctuations, and credit losses.

Your organization is dynamic, with constantly changing internal physical facilities, operations, services, and personnel. Ideally, the process of reviewing assets and exposures should be undertaken on an annual basis.

Government at all levels is further complicating business life by introducing or codifying exposures through legislation. The Employee Retirement Income Security Act (ERISA), The Equal Employment Opportunity Act (EEOA), the Americans with Disabilities Act (ADA), and the Foreign Corrupt Practices Act (FCPA) are all examples of the additional exposures, liabilities, and regulatory demands being made on our institutions. A natural byproduct of these and similar laws is a substantial increase in the total cost of risk through administrative expenses, risk control expenses, litigation cost and insurance costs.

Who Identifies Your Assets and Exposures?

Someone in your organization should have the primary responsibility for this function. Outside vendors, such as your insurance agent or broker and a risk management consultant, can be of particular assistance in that they bring special expertise and a fresh view to the process. I hope this information is helpful and I welcome any questions.

Michael Brennan of Brennan & Associates Risk Management and Insurance Services, Inc. and CALR Member, can be reached via e-mail at mbrennan@brennanassoc.com or toll-free at (800) 509-6452. Check out Brennan & Associates Risk Management and Insurance Services, Inc.'s web site: www.brennanassoc.com.

THE LAW AND YOU

(Continued from previous page...)

I know, I know, California Code 7507.12 says that the repossession was complete because the vehicle was connected to the tow truck. But the question was did the Repossessor assault James. And it is not exactly a slam dunk that you as the repossessor would even win the wrongful repo case in California. A judge's footnote in the 2005 Myers case in California states:

"We have no occasion here to decide whether, under California law, one who gets access to a vehicle (making repossession complete under § 7507.12) is barred from taking it (under § 9609(b)(2)) if a breach of the peace occurs after the repossession but before the repossessor can remove the vehicle from the property."

Did the Repossessor assault Carolyn? The Court answers, NO

Although Carolyn entered the carport briefly during the repossession, she went back inside the house after seeing her husband reach down to unhook the Mercury. Based on Carolyn's recounting of the events the Repossessor never threatened or attempted to contact her. Consequently, reasonable minds could only conclude that the Repossessor did not assault Carolyn.

Was there a conversion of personal effects? The Court answers, YES.

The Court found that the Repossessor did not dispute that when he repossessed the Mercury it contained personal items that he did not return to James. Consequently, even though a lawful repossession leaves the debtor with no claim for conversion of his vehicle, he may assert a conversion claim against the Repossessor for any personal property taken with the vehicle and not returned.

Insurance Implications of using Independent Contractors

by Michael Brennan, Brennan & Associates

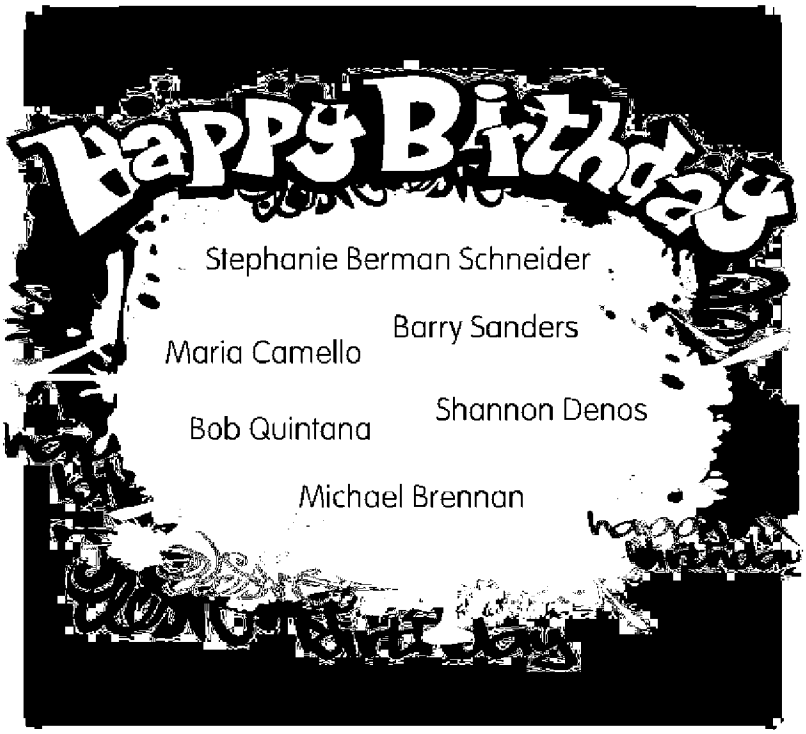
It is common practice in the Recovery Industry to use "independent contractors" in lieu of employees to perform repossessions. I know there are advantages to this practice. The purpose of this article is to alert you to some of the consequences of using independent contractors if you are not already aware.

Collateral recovery companies have special insurance policies which cover things like *Garagekeepers Legal Liability* on a *Direct Primary* basis, *Drive away* coverage and *Wrongful Repossession* among other things. These coverages are not found in standard commercial automobile, general liability or even towing policies which independent contractors may provide you as evidence of insurance. This is in addition to the workers' compensation and tax implications of using independent contractors.

If you use independent contractors you put your company at risk if their coverage is not equal to yours. The lender - your customer is going to hold you accountable since your name is on the assignment. I am hearing some lenders are already demanding proof that your adjusters are W-2 employees before they will even send assignments. If they are asking for this documentation there must be a reason behind it.

Protect your company by requiring the proper insurance coverage from independent contractors. Have your agent or broker review the documentation to make sure the right coverage and endorsements are in place.

I hope this information is useful and helps your company avoid surprises.

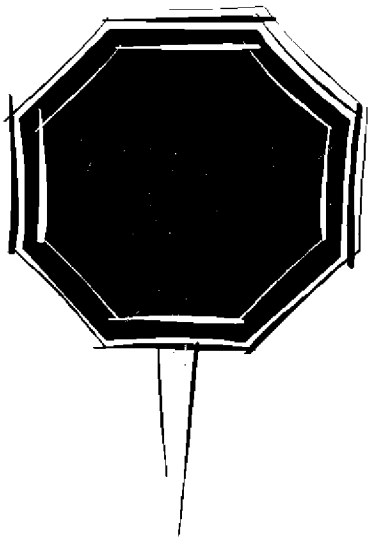


(Continued from previous page.)

DON'T

- Issue the Temporary Repossession Employee Registration to an applicant who declares under penalty of perjury he or she HAS been convicted of a felony or committed any other act constituting grounds for denial of registration. **Checking "Yes" to Question #10 on the Application for Repossession Registration precludes an applicant from working as a Repossession Employee on a Temporary Registration due to the conviction or act constituting grounds for denial.** Conviction does not preclude registration. [BPC §7506.9(b)]
- Copy Temporary Repossession Employee Registration Applications and use the Temporary Registration without the embossed state seal [BPC §7606.9(b)]
- Use Temporary Repossession Employee Registration past the 120 days allowed. [BPC §7506.9(c)]
- Forget to sign and date the back of the Repossession Employee Registration Application [BPC §7506.3]
- Allow a Temporary Repossession Employee to work without carrying the Temporary Repossession Employee Registration on his or her person [BPC §7506.9(d)]

In keeping with its statutory mandate to protect consumers, the Bureau will continue to conduct compliance reviews of Temporary Repossession Employee Registration Applications. We welcome your comments on our enforcement efforts. You may contact the Bureau Enforcement Unit at (916) 575-7000, Enforcement Manager George Paddeck, or Bureau Enforcement Representative, Laura M. Jestes at (916) 575-7011 or laura.jestes@dca.ca.gov.



AB 2774 – Serious Cal OSHA Violations

Recent legislation passed by Cal OSHA sets out a clear series of steps Cal OSHA will follow to establish a violation as serious. Serious violations will be expensive.

Defenses for employers include such things as having an approved Injury and Illness Prevention Plan (IIPP). "Canned" or "generic" IIPPs which are not actively being worked on will generate costly fines.

Brennan & Associates has resources available for specific safety consultations if you are interested. Please contact your Brennan & Associates representative if you would like our help in better understanding AB 2774.