



PROTECTIVE SAFEGUARDS ENDORSEMENT

How to Avoid Having a Property Damage Claim Denied

WHETHER YOU own and insure your office or other business property, or insure the office or building you rent, you will obviously want to make sure that you have an automatic sprinkler system or some other fire detection or suppression system in place in case of fire.

But what happens if there's a fire in your building and your sprinkler system fails? When you make your claim, you could be in for a nasty surprise if your policy has a "protective safeguards endorsement."

If your policy contains this endorsement and you fail to maintain any of the protective safeguards at your commercial facilities and you suffer a loss caused by fire, coverage for the fire loss can be denied by your insurance company.

Also, if you turn off or suspend any safeguards — even if it is for routine maintenance — and fail to notify the insurance company of the suspension, and a loss occurs during the suspension, coverage can be denied.

The endorsement will spell out that the insurer will not pay for loss or damage that is caused by or resulting from a fire if, prior to the fire, the policyholder:

- Was aware that any of the protective safeguards had been suspended or were impaired prior to the fire, and failed to inform the insurer.
- Failed to maintain the protective safeguards in complete working order.

Endorsement Types

- Automatic sprinkler system
- Automatic fire alarm
- Security service
- Service contract
- Automatic commercial cooking exhaust and extinguishing system
- Any other protective system described in the endorsement schedule

Claim denial lessons from the front

Burmac Metal Finishing Co. — An Illinois appellate court ruled that an insurer was justified in denying coverage for a fire and explosion because Burmac had capped some of its 600 automatic sprinkler systems at its building without notifying the insurer.

The court said this constituted failure to maintain the system.

Y2K Textile, Inc. — A California appeals court ruled that an insurer had properly denied coverage for fire loss when the protective safeguards endorsement required the insured to maintain a contract with a duct-cleaning service, yet never secured such a contract.

Source: *Faegre Baker Daniels blog*

Policies will also include instructions for when you must inform your insurer of a suspension of a safeguard.

See 'Be Sure' on page 2



3155 Olsen Drive, Suite 400
San Jose, CA 95117

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COMMERCIAL LOCATIONS

FAIR Plan Property Coverage Limits to Increase

CALIFORNIA INSURANCE Commissioner Ricardo Lara has approved a request by the FAIR Plan to increase commercial property coverage limits.

The move is aimed at ensuring that commercial facilities with FAIR Plan coverage are not underinsured, which can be devastating if they suffer a total loss.

Under the new limit, the FAIR Plan will have a new “high-value” property coverage option for housing developments under construction, farms and businesses with multiple buildings at one location.

New commercial property limit

Per building:	\$20 million
Total maximum:	\$100 million per location
Current limit:	\$20 million per location

The FAIR Plan must make these new coverage limits available to all eligible applicants for both new and renewal policies before July 26.

FAIR Plan policies are not a complete replacement of a commercial property insurance policy. Policies will only cover damage from the following perils:

- Fire
- Lightning
- Internal explosion

Optional coverages are available at an additional cost, such as for vandalism and malicious mischief.

Private insurer policies cover more. There are two types:

Basic form policies. They provide the least coverage, and usually cover damage caused by fire, windstorms, hail, lightning, explosions, smoke, vandalism, sprinkler leakage, aircraft and vehicle collisions, riots and civil commotion, sinkholes and volcano eruptions.

Broad form policies. These policies usually cover the causes of loss named in the basic form, as well as damage from leaking appliances, structural collapses, falling objects and the weight of ice, sleet or snow.

If you must go to the FAIR Plan, we can arrange for a “differences in conditions” policy that will cover the areas in which the plan is deficient compared to a commercial property policy.

Types of buildings covered

The FAIR Plan will cover the following types of commercial buildings:

Habitational buildings – Buildings with five or more habitational units, such as apartment buildings, hotels or motels.

Retail establishments – Shops such as boutiques, salons, bakeries and convenience stores.

Manufacturing – Companies that manufacture most types of products.

Office buildings – Offices for professionals such as design firms, doctors, lawyers, architects, consultants or other office-based functions.

Buildings under construction – Residential and commercial buildings under construction from the ground up.

Farms and wineries – Basic property insurance for commercial farms, wineries and ranches, not including coverage for crops and livestock.

A final word

The higher limits will come as a relief to many businesses in California whose properties’ replacement costs far exceeded the FAIR Plan limits. That said, premiums remain high under the FAIR Plan.

Besides the FAIR Plan, there is another option if you can’t find coverage. We can try to find coverage in the “non-admitted” market, which consists of global insurance giants like Lloyd’s of London.

These entities are not licensed in California, but they can still cover properties in the state, which we can access through a surplus lines broker. ❖



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Be Sure to Get Copy of Any Maintenance Contracts

Most endorsements include the following safe harbor provision:

“If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.”

Insurers may offer a premium discount or a credit if the property policy includes a protective safeguards endorsement.

What you should do

If you have a covered commercial property and are unsure whether it includes a protective safeguards endorsement, you can call us.

These endorsements can hinder your ability to get a damage claim paid.

If your policy does include it, we can also work with you and the insurer to see if it can be removed. ❖



WORKPLACE SAFETY

10 Tips for Dealing with OSHA Inspections, Citations

WHEN OSHA shows up, it's not the time to figure things out on the fly. Whether you're in construction, manufacturing or any other field with safety exposure, knowing the ground rules can make all the difference between a successful visit or one where you leave yourself exposed to penalties and a drawn-out appeals process.

If you aren't careful and prepared, fines can quickly pile up. Here's a quick guide to help you handle inspections, citations and communication with OSHA before, during and after they step on site.

1. Ensure you have a walkaround rep

Under OSHA regulations, you are allowed to have someone represent you during an OSHA inspection — yes, even an attorney. It's a smart move to assign someone in advance who knows your operations and your safety protocols and who can speak on your behalf.

2. Sit in on manager interviews

OSHA has the right to interview members of your team. If they interview one of your managers or supervisors, you have the right to be present. It's a good idea to have a company rep or legal counsel there to help ensure the facts are clear and accurate.

However, if they decide to interview a non-managerial employee, you do not have the right to have a manager present.

3. Employees have choices too

Non-supervisory employees can choose to speak with OSHA privately, but they don't have to. They have the right to refuse to participate in an interview with OSHA and to end an interview at any time. They can also refuse to allow OSHA to record the meeting.

Conversely, you cannot take retaliatory action against an employee who agrees to be interviewed.

4. There's a six-month deadline for citations

OSHA can issue citations up to six months after a violation occurs. However, if OSHA later learns that you concealed a violation or misled them, the clock resets to when they learn of the subterfuge.

If you don't hear back in the first month or two since the inspection, you are not out of the woods for several more months.

5. No injury? You can still be cited

A workplace injury might bring OSHA in the door, but they can cite you for any unsafe condition they find during the inspection — even if no one was hurt or the issue wasn't what prompted the visit.

6. "Not my worker" isn't always a defense

On shared job sites, you can be cited for hazards affecting another company's employees under OSHA's Multi-Employer Doctrine.

If your team creates or controls a risk, such as the owner of a construction project, you're potentially responsible — even if the injured employee works for a subcontractor.

7. Hazards can be cited, even without a rule

Under OSHA's General Duty Clause, it can cite you for a serious hazard even if there is no specific standard for the hazard and you haven't taken reasonable steps to prevent or abate the risk.

8. You have 15 working days to respond

If you get a citation, the clock starts ticking. You have 15 business days to formally contest it.

But you also have the option to negotiate a resolution before that deadline by requesting an informal conference, which can sometimes be a faster and less expensive option.

Employers often use these informal conferences to negotiate the settlement of a citation before resorting to legal remedies in a formal contest.

9. Citations don't have to be detailed

OSHA doesn't need to spell out every detail in a citation. As long as you get fair notice of what's being alleged, you'll need to get further clarity through the legal or discovery process.

10. Request inspection records with FOIA requests

You can request OSHA's inspection records using a Freedom of Information Act request.

These files can provide insight into why OSHA took certain actions, and help you better prepare for what comes next. ❖

CONSTRUCTION SECTOR

Deal with Unbonded Subcontractors at Own Risk

IF YOU hire unbonded subcontractors on a construction project, you could be putting your organization at significant financial risk.

If the subcontractor you hired fails to perform their work as specified in the contract, without a performance bond, you have no means of recovery from the company. Also, if the subcontractor fails to pay its subcontractors or suppliers, without a payment bond, your organization could be left holding the bag for the errant unbonded subcontractor.

Despite these risks, many contractors don't require subcontractors to be bonded because it raises the cost of a project.

But any costs related to bonding are negligible compared to the problems you may encounter if you deal with unbonded subs.

The two most commonly used contract bonds for general contractors are payment and performance bonds.

- Performance bonds are meant to ensure that a contractor will perform and fulfill its contractual obligations in relation to the project owner or obligee.
- Payment bonds guarantee that the general contractor will pay subcontractors and materials suppliers whatever is owed them. This bond is also meant to protect the client from claims arising against them due to contractor negligence.

Payment bonds also cover all first-tier subcontractors and materials suppliers, as well as second-tier subcontractors and suppliers to first-tier subcontractors on public construction projects.

In other words, all parties are well covered when a contractor has obtained payment and performance bonds.

General contractors are at risk if a subcontractor defaults on its obligations, or fails to pay its lower-tier subcontractors and suppliers.

Even if you have a long-standing relationship with a subcontractor, you are still putting your organization at risk if you do business with them and they are unbonded.

Other benefits

Higher standards – The chances of a subcontractor failing to finish its work, or failing to pay its own subs and supplier, are greatly reduced if they are carrying a bond.

That's because a surety company must prequalify a business before they can secure a bond. To qualify, it has to go through a stringent process, including an examination and assessment of the company's financial health and its ability to perform on projects.

The latter process is done by looking at prior projects the company has worked on and its experience in the industry.

The surety firm also assesses the subcontractor's documentation and how the business operates.

In other words, the prequalification process weeds out subcontractors that are either not fit for a project or may not have the intention to perform well on it. Sureties have no interest in underwriting bonds to unstable businesses, so they make sure to pick the most reliable subcontractors.

Reliability – Bonded companies are also more likely to work responsibly due to their obligations to the principles of the project under the bond contract's indemnification agreement.

A subcontractor bond will typically require that the business entity and its owners provide indemnity in the form of personal assets. Thus, subcontractors that are willing to put their personal assets at risk are more likely to see the job through and do it properly.

Good relationships – Most subcontractors that are bonded and have been bonded on other projects will typically have a good relationship with their surety company.

Such partnerships are priceless in the inherently risky construction sector.

Companies that operate prudently and foster and maintain good relationships with their surety companies, suppliers and other contractors are preferred business partners for all involved. ❖



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