MANAGINGRISK

Morton Insurance & Risk Management

7340 East Caley Ave., Suite 350
Centennial, CO 80111
Phone: 877.836.2660
Fax: 720.488.4918
www.mortonriskmanagement.com

"Companies get out in front and stay there by raising the standards by which they judge themselves and by which they are willing to be judged."

—Fred Smith

RISKNotes

Insurers say the Terrorism Risk Insurance Act should be extended two years beyond its current December 31, 2005 expiration date. However, congressional conservatives are urging insurers to develop ways to insure terrorism without relying on government backing. Under the TRIA, the Treasury Department will pay insured terrorism losses once they reach a set amount, currently $15 billion.

If TRIA is not renewed this year, insureds could find it difficult to obtain coverage after Jan. 1, 2006, particularly commercial property owners, whose lenders require coverage for terrorism-related losses. Insurers may develop a new type of war risk coverage to cover commercial real estate, particularly for high-risk "trophy" buildings, adapting it from shipping and aircraft coverage. They might also limit their loss exposure by subjecting coverage to cancellation at the insurer's discretion if the Department of Homeland Security raises the terror alert level to orange or red.

ALSO IN THIS ISSUE

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- No Boats Here: Inland Marine Coverage

Workers' Compensation

Drug & Alcohol Abuse Fuel Comp Claims

It's time to get rid of the image of drug and alcohol users and abusers as unemployed slackers. You can find drug users anywhere—including, most likely, among your workforce. A U.S. Department of Health and Human Services survey found that nearly 73 percent of all current drug users were employed in 1997, and nearly 14 million people had used drugs within the past thirty days. Rates of use were highest among persons aged 16 to 25–the age when most people enter the work force.

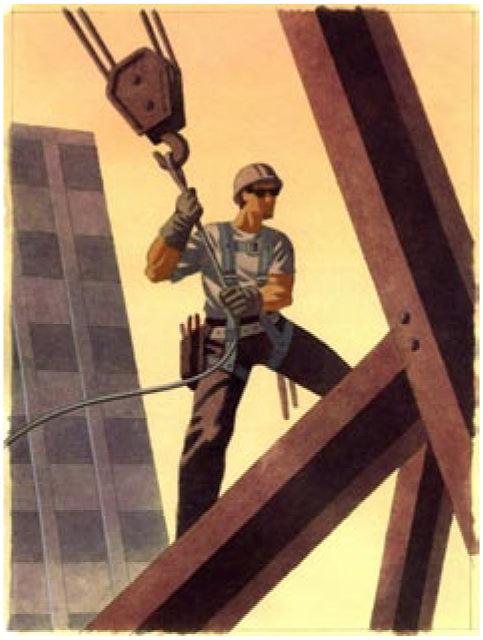
Why should this concern you? The National Drug Free Workplace Alliance (NDFWA) estimates that abuse of illegal drugs cost U.S. employers $160.7 billion in 2000. Productivity losses due to drug-related illness and death cost $110 billion in the same year.

The National Institute on Drug Abuse estimates that drug abusers cost their employers about twice as much in medical and workers' compensation claims as their drug-free coworkers. Further, the NDFWA attributes as many as 40 percent of industrial deaths to drug use or alcoholism.

What are the most-abused drugs? The National Institute of Health lists the following most common "drugs of abuse":

- ❑ **Cocaine**
- ❑ **Club Drugs.** These include MDMA (ecstasy), Rohypnol, GHB and ketamine. These drugs are most commonly used by teens and young adults who are part of a nightclub, bar, rave or trance scene.
- ❑ **Heroin**
- ❑ **Inhalants.** These include glues, nail polish remover, lighter fluid, spray paints, deodorant and hair sprays, canned whipped cream and cleaning fluids. Widely available, they appeal mostly to young people.

DRUG — continued on Page 3



Additional Insured Coverage

Liability insurance covers you from losses due to claims your company, its employees or products or services caused harm or wrong to a third party. In other instances, both your organization and another, such as a contractor or other entity working on your behalf, are jointly liable for the harm or wrong. In these cases, you would want coverage under the contractor or other entity's insurance, rather than relying solely on your own. You also need protection from "vicarious liability" suits, in which a third party sues your organization for an injury or wrong caused by another party with which you have a relationship, such as a subcontractor.

There are two ways to obtain coverage under another entity's policy: "contractual indemnity," in which your contract with the other party states that it will "indemnify," or cover, you for any liability costs resulting from your joint operations; and by requiring the other party to name your firm as an additional insured under its insurance policy.

Obtaining additional insured status often provides greater protection than contractual indemnity. Some states and courts look unfavorably on contractual indemnity, because subcontractors who want business sometimes have little bargaining power. In those cases, subcontractors may find themselves in the position of accepting risk they cannot deal with. Additional insured coverage, on the other hand, causes no such problems.

To ensure that the other party's policy will provide you with "additional insured" coverage, it will need to obtain an additional insured endorsement to its general liability policy. Under the endorsement, an additional insured receives coverage under the policy, but unlike the named insured, does not have the responsibility of keeping any records needed for determining premiums, paying premiums or reporting claims.

Additional insured coverage now narrower

Until recently, additional insured endorsements provided fairly broad coverage. Older forms promise to cover the additional insured for liability "arising out of" the named insured's operations. Past court cases have construed this to provide additional insureds coverage in situations where the additional insured was solely negligent, if the injury or wrong somehow involved the named insured's operations. However, Insurance Services Office (ISO), which develops many of the so-called standard coverage forms for insurers, has updated its additional insured endorsement forms to require the named insured to be at least partly at fault before coverage applies. The new form provides less coverage to additional insureds by requiring any covered bodily injury, property damage or personal or advertising injury "to be caused in whole or in part" by the acts or omissions of the named insured or those acting on its behalf.

The newer endorsements also require any losses to occur "at the locations designated" in the endorsement. If bodily injury or property damage occurs outside these locations, but is still related to the operations, the newer endorsement might not provide coverage.

When you require additional insured coverage under another organization's policy, a certificate of insurance will provide proof that the named insured had this coverage on the date the certificate was issued. However, because these certificates are not part of the policy, they are not actual coverage and not binding on the insurer. The named insured can cancel the coverage without providing notice to you. You can request the insurer to provide you thirty days' notice of cancellation or nonrenewal of the endorsement. In the case of large or high-risk projects, you can request an additional endorsement that obliges the insurer to provide this notice.

Considerations for subcontractors

If the shoe is on the other foot and you are a subcontractor, obtaining additional insured endorsements for contractors and providing the required certificates can be an administrative hassle. One option is to buy a blanket additional insured endorsement. These typically provide additional insured coverage to any party with which you enter a contractual agreement (typically a construction contract or equipment rental contract).

Blanket additional insured endorsements are not as desirable for the additional insured. Additional insureds are not named on the endorsement, so the insurer cannot provide notice of cancellation or nonrenewal. They also provide narrower coverage in certain instances—for example, many of these endorsements state that coverage ends when operations are completed. This could be construed to eliminate coverage for claims that occur during operations but aren't filed until later.

For more information on additional insureds, please contact us. ❑

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- ❑ **LSD** (Acid)
- ❑ **Marijuana.** Among adults age 18 to 25, the rate of use increased slightly from 53.0 percent to 53.8 percent in 2002.
- ❑ **Methamphetamine.** This addictive stimulant drug strongly activates certain systems in the brain. Made in illegal laboratories, "meth" has a high potential for abuse and addiction. Even small amounts can cause increased wakefulness, increased physical activity, decreased appetite, increased respiration, hyperthermia and euphoria. Other central nervous system effects include irritability, insomnia, confusion, tremors, convulsions, anxiety, paranoia and aggressiveness. Hyperthermia and convulsions can result in death.
- ❑ **Nicotine**
- ❑ **PCP and other hallucinogens.** Drugs with street names like acid, angel dust and vitamin K distort the way a user perceives time, motion, colors, sounds and self. These drugs can disrupt a person's ability to think and communicate rationally, or even to recognize reality, sometimes resulting in bizarre or dangerous behavior.
- ❑ **Prescription medications.** Certain prescription drugs – opioids, central nervous system (CNS) depressants and stimulants – when abused, can alter the brain's activity and lead to dependence and possibly addiction.
- ❑ **Steroids.** Associated mostly with bodybuilding, steroids can cause psychological changes, such as increased rage and aggression, in addition to physical changes, among users.

Alcohol most commonly abused drug

Although illicit drugs get most of the attention, the overuse and abuse of alcohol—legal and easily obtained—causes more problems than illicit drug use. More than 14 percent of Americans employed full- and part-time report heavy drinking, or five or more drinks on five or more days in the past 30 days. The heaviest drinking occurred among persons between the ages of 18 and 25 years. Of these heavy drinkers, 30 percent also currently used illicit drugs.

Detecting drug and alcohol use at work

Employees in certain occupational classes have higher rates of drug and alcohol abuse. Construction workers (15.6%); sales personnel (11.4%); food preparation, wait staff and bartenders (11.2%); handlers, helpers and laborers (10.6%); and machine operators and inspectors (10.5%) reported the highest rates of current illicit drug use. The occupational categories with above-average rates of heavy alcohol use, in addition to construction, were handlers, helpers and laborers (15.7%); machine operators and inspectors (13.5%); transportation and material movers (13.1%); precision production and repair workers (13.1%); and employees in food preparation, including wait staff and bartenders (12.2%).

If you have workers in these occupational classes, or if you have workers who work with hazardous equipment or materials, you might want to consider a drug testing program. According to a 2002 report in *Risk Management*, "employers experienced a 51 percent drop in injury rates within the first two years of initiating a drug testing program." However, if not conducted properly, drug testing can expose an employer to liability claims for violating employees' privacy, for wrongful termination and for defamation. To implement a testing program that weeds out drug abusers without unnecessarily exposing you to liability, keep the following in mind:

- ❑ The safest time to test for drug use is before a candidate becomes an employee. Employees have rights protected by federal and state laws, but prospective employees generally do not. (Just apply your drug test to all job candidates, or to all candidates for a particular opening or class of openings, to avoid charges of discrimination.)
- ❑ Remember the Americans with Disabilities Act (ADA) protects people recovering from addictions. You cannot ask applicants if they have been addicted in the past; you can ask them if they currently use illicit drugs.
- ❑ If you test employees, decide when you are going to test. Some employers test all employees, or all employees in safety-sensitive positions. Others opt for random testing, which might have some deterrent effect and costs less than testing all employees in a class. Some employers only test "for cause," such as after every accident or when a supervisor or co-worker has reason to suspect drug or alcohol abuse.
- ❑ Provide employees notification of your testing program and the grounds for which they might be tested for drug use.
- ❑ Protect the privacy of employees and job candidates whenever you test. Test results should remain confidential.
- ❑ Check the reputation of the testing lab you use. False positives can lead to firing someone who doesn't deserve it—which can lead to a lawsuit. To protect your company, make sure any contract you enter with a testing lab gives the lab—rather than your company—primary liability for any mistakes.
- ❑ Have a procedure in place for handling positive results before they occur. An employee assistance program (EAP) can provide referrals to appropriate treatment programs for employees caught abusing drugs.

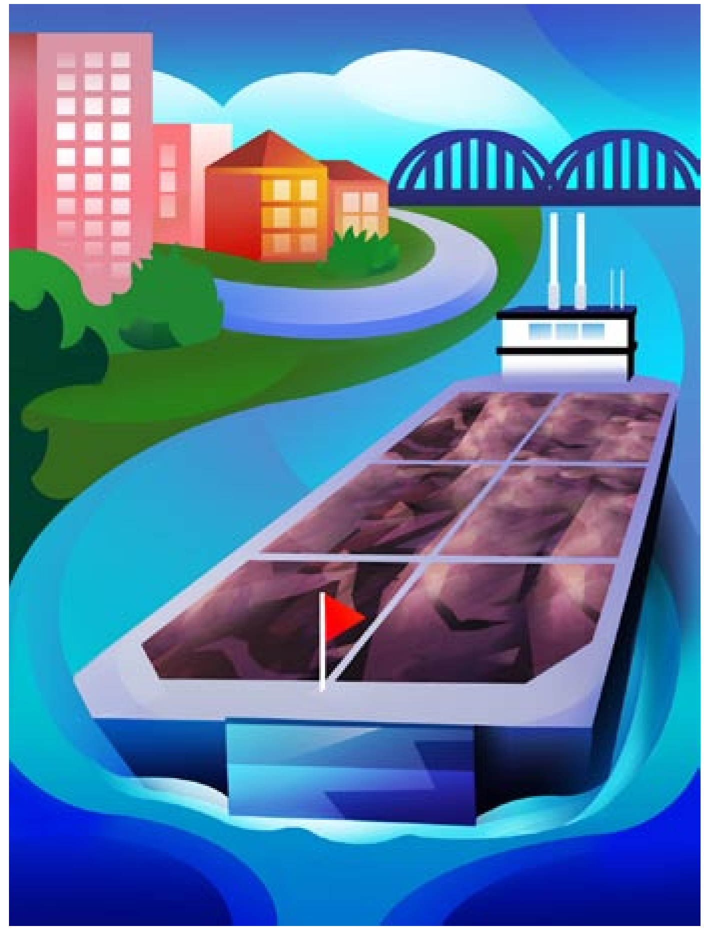
We'll cover EAPs and their role in workers' compensation in our next issue. For more information on drug testing or other methods of controlling accidents in your workplace, please call us. ❑

Hazardous Waste Can Come Back to Haunt You

If you must dispose of even small amounts of hazardous waste, be sure to use a reputable contractor. If a contractor fails to dispose of the waste properly and later goes out of business, the Environmental Protection Agency (EPA) can hold your business liable for its share of the resulting pollution. If the site is deemed a Superfund site, the EPA can hold any organization that used the site or contractor wholly liable for cleanup.

You can avoid this type of liability by: 1) checking the financial stability of any firm you use for hazardous waste removal through Dun & Bradstreet or a credit-rating service. Problems paying bills can indicate the company might go under, 2) verifying a contractor has pollution liability coverage, 3) obtaining certificates of insurance and additional insured endorsements certifying this coverage. For more information on protecting your company from liability due to hazardous substances, please see contact us. ❑

No Boats Here: Inland Marine Coverage



Although the name might make you think otherwise, "inland marine" insurance has nothing to do with boats or even Marines. This oddly named segment of the insurance industry evolved from "ocean marine" insurance, which covers ships and their cargo from "perils of the sea." Inland marine insurance originally covered goods transported over land; it now covers "movable property" and "instruments of communication" such as bridges, tunnels, piers and television antennas, as well as goods in transit.

You might be surprised at all the types of insurance coverage that fall into the inland marine category:

Block policies. These policies cover high-value goods for dealers and retailers, whether on site or in transit, and usually cover the property of others in the insured's care, custody or control. Most block policies are written on an "open perils" basis, which covers losses from all causes unless specifically excluded. Examples would be jewelers' block insurance, camera dealers' block, etc.

Builder's risk policies, which cover damage to buildings or structures while they are under construction. It also covers the equipment, materials and supplies used in construction.

Bridge and tunnel coverage. Inland marine insurance covers owners (generally municipalities or transit districts) for loss or damage to these structures.

Computerized business equipment insurance, or **electronic data processing (EDP) policies** cover data processing hardware and software.

Difference in condition (DIC) **policies** supplement the coverage provided by a "named perils" property policy, which protects insureds only from losses caused by perils named specifically in the policy. A DIC policy, by contrast, provides "all risk" coverage, but excludes the "named perils" listed in the standard fire policy. Insurers will sometimes write DIC policies on inland marine forms over other inland marine coverages.

Equipment floaters cover the equipment people use in their trade or profession, such as contractors' equipment, physician or dentist's equipment, photographic equipment and more.

"You might be surprised at all the types of insurance coverage that fall into the inland marine category"

Fine arts coverage covers artworks and collections from loss due to theft, damage, breakage (and possibly flood and earthquake damage) and loss of value due to loss of one of a pair or set, whether at the permanent site, on loan or in transit. A business package policy provides some coverage, but probably not enough for valuable pieces or a significant collection.

Motor truck cargo policies insure common carriers and contract carriers for their legal obligations for cargo. Generally, a carrier has legal liability for cargo while on its trucks and awaiting transit. This insurance covers loss or damage to goods while in the carrier's care, custody or control.

For more information on inland marine policies and how they can provide additional coverage for valuable goods, please call us. ❑