BOLDS
Bolds Insurance Brokerage

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# THE REPORT

RISK MANAGEMENT

## Don't Get Caught Holding Bag in Multi-employer Projects

LARGE PROJECTS involving multiple contractors are ripe for claims and if your company is involved in such an enterprise, one of your top priorities needs to be risk mitigation.

With the specter of property damage, material losses and workplace injuries looming large, especially when there is more than one employer on a site, it is imperative that all parties hash out responsibilities and insurance issues prior to the project starting.

All of the parties need to discuss openly risk transfer strategies in their contracts to limit their liability for claims and adopt procedures for handling the anticipated risks. You should cover waivers of subrogation and reciprocal insurance requirements.

### Insurance requirement

If youre concerned about the insurance implications, discuss it with us or your broker.

Start by brainstorming about possible claims that may arise during the project. After you've come up with that list, it will be easy to identify the types of insurance you'll need.

A short list would likely include:

- Builders risk insurance,
- Commercial general liability insurance,
- Workers' compensation,
- Professional liability insurance,
- Property insurance

Depending on the project, though, specialized types of insurance may be required.

Once you've finalized the list, the parties can negotiate who can get the best rate for coverage that is available to more than one party.

In the event of catastrophic liability claims, commercial umbrella insurance provides a broader level of coverage beyond the scope of the coverage provided by commercial property and liability insurance policies.

A word about umbrella coverage. Umbrella coverage provides a layer of protection above that afforded by underlying policies. When losses exceed the coverage limits of standard business auto, business property or commercial general liability policies, commercial umbrella policies take effect to cover the balance (subject to policy limits and other conditions).

Property owners have filed countless lawsuits against contractors, subcontractors and suppliers, alleging damages arising out of construction defects. These contractors have often tendered claims under their CGL policies.

These insurance claims have been litigated ad nauseum and the emerging consensus appears to be that construction defect claims are generally not covered under CGL policies.

### Waiver of subrogation

A waiver of subrogation provision policyholders from transfers liability for a claim to another parties' insurance.

These waivers are intended to reduce litigation that might otherwise arise when an insurer feels another party was fully or partially responsible for the claim.

With a waiver, an insurer only has rights against its policyholder. If the policyholder has contractually waived subrogation as to a subcontractor, the insurer generally cannot use subrogation to recover its payment for a loss from the contractor.

*See 'Waivers' on page 2*

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CONSTRUCTION

# Deal with Unbonded Subcontractors at Your Own Risk

YOU SHOULD never hire an unbonded subcontractor on a construction project, unless you want to put your organization at significant financial risk.

If the contractor 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 they think bonding 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 BOND TYPES

All parties are well covered when a contractor has obtained a:

- Performance bond: These are meant to ensure that a contractor will perform and fulfill its contractual obligations in relation to the project owner or obligee.
- Payment bond. These 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.

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.

There are added advantage to working with bonded contractors.

**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 company before they can secure a bond. To qualify, they have to go through a stringent process, including an examination and assessment of a 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.

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 on your project 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 companies 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 which foster and maintain good relationships with their surety companies, suppliers and other contractors are preferred business partners for all involved.

Contact Atlas for a bond quote TODAY! ❖

*Continued from page 2*

# *Waivers of Subrogation Can Reduce Litigation*

Waivers of subrogation promote economic efficiency because only one party needs to insure a particular risk. Addressing these issues upfront in your contract is the first step to controlling the economic impact to all parties involved.

### Wrap-ups

Large construction projects are becoming more difficult to finance because of increasing costs, lack of control, and rising litigation. In recent years, "wrap-up" insurance programs have been usd to help decrease the cost of construction while making the project safer.

In a wrap-up, the project owner furnishes a single insurance program for all parties involved in the project for the duration of the project. This insurance relates to the exposures of the project and protects the project owner, contractor, and all tiers of subcontractors.

Most wrap-ups include workers comp, general and excess liability, and builders risk coverages (auto liability and contractors equipment are not included). Wrap-ups can include project architects/engineers errors and omissions coverage and other optional coverages.

Wrap-ups on large construction projects can be either owner controlled or contractor controlled. Owner controlled wrap-ups account for about 90% of the wrap-up programs currently being performed in the U.S. ❖

INTERNAL SUPPLY CHAIN

# Planning Ahead for Equipment Failures Can Save You

WE'VE HAD articles in our newsletter about how to protect against and plan for external supply chain risks. These risks are often out of your control as they can affect suppliers or transportation providers, as well as transportation networks and infrastructure.

However, you also have internal supply chain risks, which you are better able to control. These risks can affect a variety of businesses from manufacturers to retailers and restaurants – and any business that has some type of revolving stock.

It could be vital to the survival of your business that you prepare for internal risks such as machinery and equipment breakdowns.

Knowing the right steps to take ahead of time can save you from making a bad situation worse or significantly delaying the resumption of operations. All of that, of course, amounts to extra costs for your operation, including the potential for lost revenues.

If you prepare for a failure of a key piece of equipment or machinery, you also won't be scrambling trying to figure out your next step in times of internal disruption or crisis. Making decisions at such times can often lead to more problems and costs.

Your risk management plan to deal with such failures should include:

## 1. A list of key equipment

- Production machinery, including gear sets, motors, compressors, belts and fans.
- Boilers and pressure vessels.
- IT and communications systems, including wiring and cables.
- Electrical equipment or system, including transformers, switch boxes, cables, wiring and motors.

## 2. An inventory of spare parts

Optimally, you should keep all the key spare and replacement parts for your main systems on site. You can ask the manufacturers or service companies of those systems to assist you in having an emergency inventory on hand.

Still, it may not be feasible to have all items on site. In that case, you should compile a list of the other parts that could break and need replacement, and how to quickly order them from the correct supplier. You should include on this list the cost of those items and delivery times – and update the list at least every year.

## 3. Plan for renting replacement equipment

As part of your planning, you should obtain quotes from companies that rent out the same type of equipment or machinery that you use, and update the quotes every year. The quotes should include all pricing like transportation and set-up fees, as well as estimated time from ordering to delivery and start-up.

Don't forget to include alternative suppliers.

## 4. Repair firms

You should also have at the ready information on the various contractors that are able to repair equipment that's broken down. The information should be listed by equipment item and should include contractor capabilities, contact information and availability.

Again, you should update this information every year.

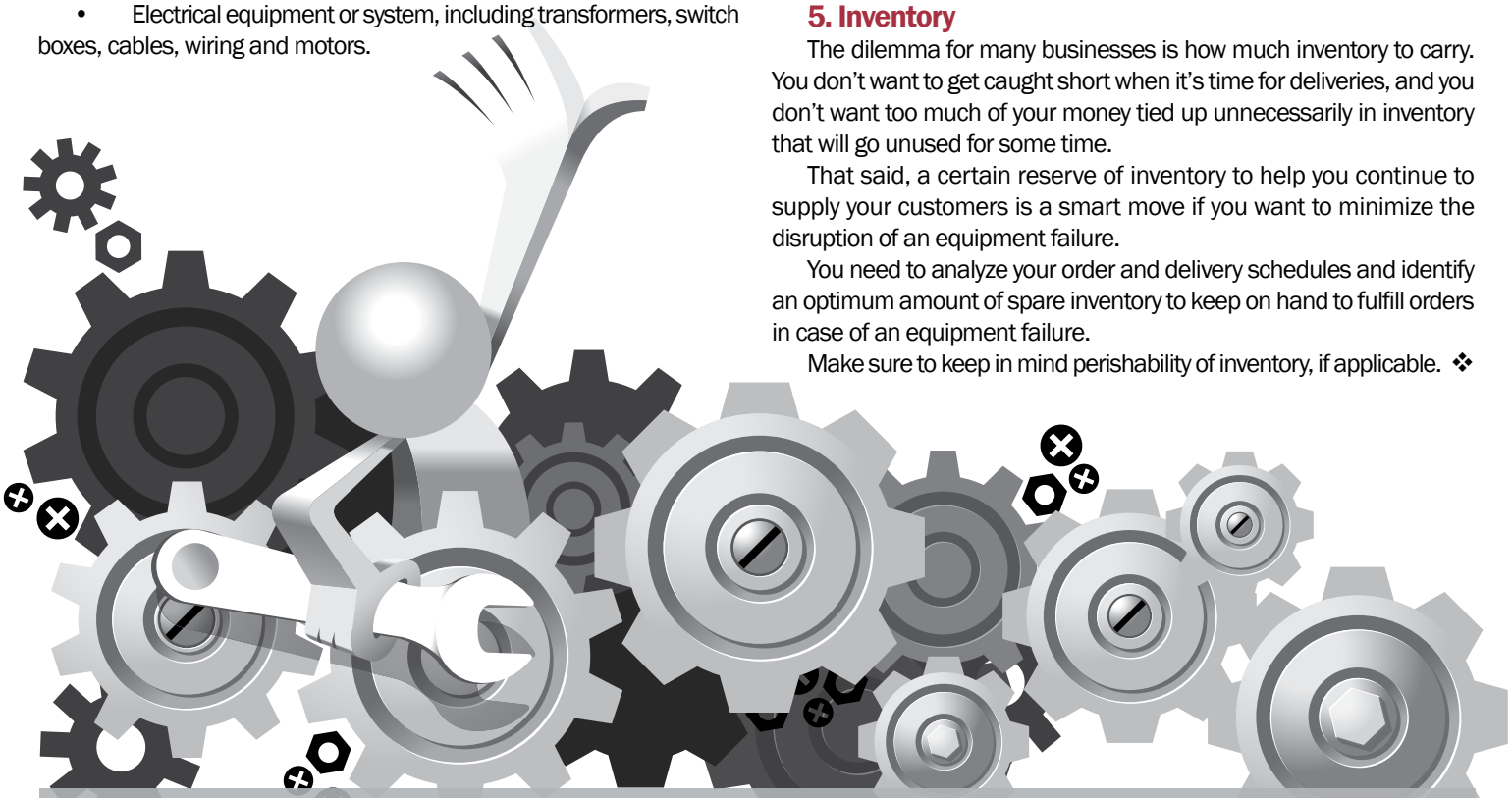
## 5. Inventory

The dilemma for many businesses is how much inventory to carry. You don't want to get caught short when it's time for deliveries, and you don't want too much of your money tied up unnecessarily in inventory that will go unused for some time.

That said, a certain reserve of inventory to help you continue to supply your customers is a smart move if you want to minimize the disruption of an equipment failure.

You need to analyze your order and delivery schedules and identify an optimum amount of spare inventory to keep on hand to fulfill orders in case of an equipment failure.

Make sure to keep in mind perishability of inventory, if applicable. ❖



PROPERTY RISK

# Protecting Your Business from Threat of Wildfire

AS WILDFIRES RAGE in California and elsewhere in tinder-dry areas of the US, now more than ever you need to make sure that your business is protected from the threat.

Whether you own or operate an apartment complex, convenience store, office, restaurant or other retail establishment, the steps you take now will reduce the risk of costly repairs or rebuilding if a wildfire strikes.

If you are in one of the many tinder-dry areas this year, you need to be prepared to deal with a fire and keep your business operating.

## Surroundings most important

The goal of an effective wildfire protection plan is to keep the fire from coming dangerously close to any structure on the property.

Inspect the premises around your building to see if there is anything around or attached to a structure that can be a potential wick that could allow the fire to come dangerously close to your premises.

Storage buildings, trash bins, equipment and other combustible items can allow fire to reach the building. If possible, relocate these at least 30 feet from the business and other structures on the property.

Relocate propane tanks at least 30 feet away from the building and other structures on the property. If relocation is not an option, create a 10-foot zone around a tank using low-combustible materials such as rock, gravel mulch or irrigated lawn.

## Exterior structure

Choose noncombustible building materials when rebuilding or renovating, and particularly if you are choosing new siding for your structure. You should also consider these most important flashpoints and conduits for fires:

- **Roofing** – Choose a Class A fire-rated roof covering, and keep the roof and gutters clear of debris. Businesses that share a roof are particularly vulnerable if the entire building is not well maintained.
- Vents – Attic and crawl space vents are vulnerable entry points for wind-driven embers. Cover with 1/8-inch metal mesh screens.
- **Attachments** – Awnings, decks, patios and porches also can act as a wick, bringing flames to the building. Even if you have noncombustible siding like stucco, a burning deck or other ignited combustible items close to the wall will provide a direct flame exposure to the doors, windows or sliding glass doors.
- **Windows** – Radiant heat from a wildfire can break single-pane windows. You should install dual-pane windows with tempered glass for increased protection.

Also, open windows can be entry points for embers. Educate tenants and employees about the importance of closing all windows before evacuating if fires draw near.

## Other considerations

- Have plenty of fire extinguishers on location, and get them inspected regularly.
- Back up important documents that could be destroyed.
- Have an evacuation plan in place to safely exit the building in case of a wildfire.
- Practice your evacuation plan, so each employee will know how to exit the building calmly and safely.
- Follow local smoke detector and sprinkler system ordinances.
- Have flashlights and extra batteries available in case your business loses electricity. ❖

## YOUR BUSINESS'S DANGER ZONES

**Tend to the surroundings of your premises by using the following three-zone approach:**

**Zone 1 (0-5 feet):** Rock or gravel mulch and low-growing plants or lawns are good choices for this zone. Avoid combustible structures or materials in this area.

**Zone 2 (5-30 feet):** Vegetation island. Low tree branches should be pruned. Remove shrubs.

**Zone 3 (30-100 feet):** Keep tidy. Thin out vegetation between trees. Remove shrubs. Don't let tree canopies touch.