

Module 1

Commercial Liability Loss Overview

Commercial Liability Loss Overview

Module 1 Chapter 1

1

1

Objectives

- ☐ Obj I: Torts, Contracts, and Statutes
- ☐ Obj II: Commercial Liability Loss Exposures
- ☐ Obj III: Using Commercial Liability Risk Control
- ☐ Obj IV: Controlling Liability Losses

2

2

Torts, Contracts, and Statutes

Objective I

3

3

Legal Liability

- ❑ Legal liability is an obligation for a person or entity to pay a sum of money to another.
 - ❑ Can be imposed by civil and/or criminal law.
- ❑ Liability insurance responds to civil losses.
 - ❑ Insurance for criminal liability is prohibited.
- ❑ Legal liability imposed by civil law is based on:
 - ❑ Torts.
 - ❑ Contracts.
 - ❑ Statutes.

4

4

Torts

- ❑ Torts are civil wrongs, and include negligence, intentional torts, and strict liability torts.
 - ❑ Most claims covered by liability insurance are based on tort law.
- ❑ Negligence is the failure to exercise a reasonable degree of care.
 - ❑ Duty owed to another person.
 - ❑ Breach of that duty.
 - ❑ Resulting harm.
 - ❑ Actual loss or damage occurs.

5

5

Torts

- ❑ An intentional tort is a tort committed by a person who foresees the act will cause harm.
 - ❑ Does not necessarily have to be performed with malicious or hostile intent.
- ❑ Strict liability is liability imposed even though defendant acted neither negligently nor with intent to cause harm.
 - ❑ Absolute liability.

6

6

Contracts

- ❑ Legal liability can also be imposed by contracts.
 - ❑ Breach of contract – failure to fulfill promise.
 - ❑ Breach of a seller’s warranty is generally only type of breach that is insurable.
 - ❑ Agreement one party has made to assume the liability of another party.
 - ❑ Contractual liability is assumed through a hold-harmless agreement and is often covered under liability insurance.

7

7

Statutes

- ❑ A statute is a written law passed by a legislative body, at either the federal or state level.
 - ❑ Can impose legal liability on certain persons or organizations.
 - ❑ Can give certain persons or organizations an absolute legal obligation to compensate other persons if certain events occur.

8

8

Practice

- ❑ A civil law claim alleging a tort would most likely be based on:
 - ❑ A. Criminal acts.
 - ❑ B. Negligence.
 - ❑ C. Statute.
 - ❑ D. Breach of contract.

9

9

**Commercial Liability
Loss Exposures**

Objective II

10

10

Loss Exposures

- ❑ Categories of commercial liability exposures:
 - ❑ Premises and operations liability.
 - ❑ Products and completed operations liability.
 - ❑ Auto liability.
 - ❑ Workers compensation and employers liability.
 - ❑ Professional liability, management liability.
 - ❑ Marine liability, aircraft liability.
 - ❑ Cyber liability.

11

11

Premises and Operations Liability

- ❑ Premises and operations liability arises from bodily injury or property damage caused by:
 - ❑ An accident occurring on an organization's owned, leased, or rented premises.
 - ❑ An accident arising from organization's ongoing operations away from the premises.
 - ❑ Certain mobile equipment, such as cranes.
- ❑ Liability is usually based on negligence.
 - ❑ In some cases, can be based on strict liability.

12

12

Products Liability

- ❑ Products liability arises out of the manufacture, distribution, or sale of an unsafe, dangerous, or defective product.
- ❑ For negligence actions, the plaintiff must prove:
 - ❑ Product was defective when it left the manufacturer's or supplier's control.
 - ❑ Condition made the product dangerous.
 - ❑ Product was proximate cause of injury.
- ❑ Strict liability can be imposed on manufacturer.

13

13

Completed Operations Liability

- ❑ Completed operations liability is the liability of an entity arising out of their completed work.
 - ❑ Under the common-law accepted work doctrine, a contractor was not held liable once owner had accepted work.
 - ❑ Many courts have abandoned the accepted work doctrine.

14

14

Automobile Liability

- ❑ Automobile liability arises out of the ownership, maintenance, or use of automobiles.
 - ❑ Many states make the owner liable for damages arising from any person's operation of the auto with the owner's permission.
 - ❑ Liability can also arise from negligent maintenance of a commercial auto.
- ❑ Anyone injured has a right of action against the operator of the auto.
 - ❑ Operator's employer can also be held liable.

15

15

Workers Compensation

- ❑ An employer's responsibility to pay claims under workers compensation liability is generally imposed by statute.
- ❑ The typical workers compensation statute is intended to provide an exclusive remedy for occupational injury or illness to all employees.
 - ❑ Only remedy available is to recover the benefits required by the applicable statute.
 - ❑ No-fault basis.

16

16

Workers Compensation

- ❑ An employer's liability for the injuries of employees can also be assumed under contract.
 - ❑ Hold-harmless agreement.
- ❑ An employer who agrees to indemnify another party may be agreeing to indemnify the other party for claims made by the employer's own employees.

17

17

Practice

- ❑ Irene was visiting a local artist's studio to pick out some art for her office. While she was perusing the art, a sculpture of hubcaps fell over and injured her arm. From the commercial liability standpoint of the artist, this is an example of:
 - ❑ A. Completed operations liability.
 - ❑ B. Products liability.
 - ❑ C. Premises and operations liability.
 - ❑ D. Professional liability.

18

18

Using Commercial Liability Risk Control

Objective III

19

19

Reasons for Risk Control

- ❑ Risk control is an action or non-action that reduces the frequency and/or severity of loss, or makes losses more predictable.
- ❑ Reasons for risk control programs:
 - ❑ Liability exposures that arise from products and activities can cause serious harm.
 - ❑ Exposures can result in significant financial consequences.
 - ❑ Poor safety records and serious accidents can cause reputational damage.

20

20

Pre-Accident Techniques

- ❑ General considerations in development of risk control techniques:
 - ❑ Cost-effectiveness – evaluating cost of the measure against the benefit to be derived.
 - ❑ Legal requirements – certain techniques are required by local building ordinances.
 - ❑ Requirements and recommendations of the organization's insurers.
 - ❑ Image of the company.
 - ❑ Degree of risk aversion of management.

21

21

Pre-Accident Techniques

- Risk control techniques:
 - Loss prevention – reduces the frequency of a particular loss.
 - Placing back-up alarms on trucks.
 - Installing sidewalk heaters to melt snow.
 - Loss reduction – reduces the severity of a loss.
 - Installing smoke detectors or sprinkler systems.

22

22

Pre-Accident Techniques

- Risk control techniques:
 - Avoidance – ceasing or never undertaking an activity, thus eliminating loss potential.
 - Separation – separating loss exposures to reduce frequency or severity.
 - Rarely practical for liability exposures.
 - Noninsurance risk transfer – one party transfers loss to another party.
 - Hold-harmless agreement.

23

23

Post-accident Techniques

- Claims management mitigates the effects of losses after they occur.
 - Effective claims management measures can result in significantly improved outcomes.
- Information provided by the investigation after accidents can be used in determining root cause of accidents.
 - Determining root causes helps to direct future loss prevention and loss reduction techniques.

24

24

Practice

- ❑ A restaurant adds markings to its glass doors so patrons will not accidentally walk into the glass. This is an example of:
 - ❑ A. Loss prevention.
 - ❑ B. Loss reduction.
 - ❑ C. Avoidance.
 - ❑ D. Non-insurance risk transfer.

25

25

Controlling Liability Losses

Objective IV

26

26

Risk Control Decisions

- ❑ When determining appropriate risk control measures, professionals should consider:
 - ❑ Organizations and individuals must respect others' rights.
 - ❑ Some rights are contained in constitutions, or are determined by common or tort law.
 - ❑ Governments create laws and regulations that impose responsibilities.
 - ❑ Statutory law includes workers comp and environmental laws.

27

27

Premises Liability

- ❑ Risk control can provide these safeguards:
 - ❑ Regular inspections.
 - ❑ Maintenance programs – reduces chance of an accident.
 - ❑ Policies and procedures – removal of snow, preservation of sensitive customer data.
 - ❑ Protection – fire protection, security systems.
- ❑ Risk control program depends on type of operation.

28

28

Off-Premises Operations

- ❑ Off-premises operations present liability hazards more difficult to control than those that arise on-premises.
 - ❑ Construction contractors may be confronted with different hazards on each job site.
 - ❑ Operation of mobile equipment should be a focus of risk control efforts.

29

29

Products and Completed Operations

- ❑ Products loss exposures arise from products or services that are provided by an organization.
 - ❑ Any organization that manufactures products has this loss exposure.
- ❑ The goal of products liability risk control is to prevent or reduce product liability.
 - ❑ Product liability exposures are not always obvious.

30

30

Products and Completed Operations

- ❑ Product risk control practices should include:
 - ❑ Research and testing of materials.
 - ❑ Quality control of raw materials.
 - ❑ A manufacturing process with precise specifications and quality control.
 - ❑ Strict adherence to procedures.
 - ❑ Clear instructions for employees and users.
 - ❑ Design of proper packaging.
 - ❑ Documentation of product test results.

31

31

Product Risk Control Evaluation

- ❑ A manufacturer should consider risk control evaluation of these potential areas of concern:
 - ❑ Unpredictable behavior of consumers.
 - ❑ Strict liability standard that applies to products liability.
 - ❑ Evolving regulatory requirements.
 - ❑ Catastrophic consequence of having a batch of products found defective.

32

32

Motor Vehicle Liability

- ❑ Risk control plays important role in reducing motor vehicle accidents.
 - ❑ Strict adherence to traffic signs reduces liability exposure.
- ❑ Organizations should exercise care in hiring and training drivers.
 - ❑ Should have a written safe-driver policy and disciplinary procedures for unsafe driving.
 - ❑ Should have substance abuse testing.

33

33

Workers Compensation

- ❑ For many organizations, workers compensation represents the highest-cost liability.
 - ❑ Most states require employers with a certain number of employees to purchase insurance.
- ❑ Differs from general liability because workers compensation provides no-fault coverage.
 - ❑ Employee negligence does not eliminate employer's liability.
- ❑ Workers compensation benefits are the exclusive remedy available to the employee.

34

34

Employers Liability

- ❑ Management should develop a safety culture.
 - ❑ Employees are not only concerned for their own safety, but also for that of co-workers.
- ❑ Post-accident claim management is important following workers compensation injuries.
 - ❑ Litigation can occur regarding coverage and benefits.
- ❑ Care should be taken in the delivery of medical and disability benefits.

35

35

Practice

- ❑ Yellow Checker taxi service is a new company and wants to be proactive in managing its motor vehicle liability through stringent loss control techniques. Which one of the following situations would be most useful in preventing auto-related liability losses?
 - ❑ A. Purchasing only vehicles with side-curtain airbags.
 - ❑ B. Implementing consistent disciplinary procedures for unsafe driving practices.
 - ❑ C. Using outside contractors instead of Yellow Checker employees to drive the taxis.
 - ❑ D. Enforcing a safe-driver policy that is available to staff upon request.

36

36
