

Pest Control Insurance General Liability Claims Review

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During the past couple of years insurance prices have been on the rise, causing concern for business people in all trades and industries all over the country. Many factors are at work here. First, employers enjoyed some of the lowest insurance rates in years during the 1990s. Insurance companies continued to lower rates to gain market share, and relied upon the booming stock market to make a profit despite questionable underwriting and pricing practices. The end of the "dot-com" boom caused insurance companies to face the reality that they needed to start pricing and underwriting their insurance according to the real costs of running an insurance company. The second thing which hit the market, was excessive losses. The re-insurance market began to tighten up considerably in 2000, and even more so after the losses posted by the insurance industry during the first two quarters of 2001. The first quarter of 2001 was the worst quarter on record for the insurance industry, and the second quarter of 2001 was worse. Of course 9/11 then had a major impact on all insurance companies. The last issue, and the one this article is about, is losses. Bottom line, insurance companies partner with you by taking a small part of your gross receipts and in turn taking on responsibility for your losses. While we can't control the global events which affect the insurance industry, we can affect our claims. It is us who controls our losses - you as an individual and company, and then us collectively as an industry and as a trade association. While we provide you with tools to reduce losses on a monthly basis, it is not as frequent that we review the types of losses we suffer as an industry. The rest of this article will outline our general liability losses by subcategory.

The largest group of claims for Branch 2 general pest control are for alleged pesticide exposure; the majority of these cases involve using an emulsifiable concentrate without a deodorizer in a commercial building, resulting in an odor. Some of these cases arise out of performing pest control when people are present, but a large portion of these claims involve treating after hours, and a trace odor remaining the following day. Another area where we get claims for general pest control are for property damage. These claims range from damage claims from carpet and furniture stains from pesticides and hand tank sprayers to plant damage caused by power spray rig hoses.

The largest group of claims in sheer numbers comes from Branch 3, wood destroying pests & organisms companies. I will break these claims into several categories:

Poor workmanship and faulty repairs claims often arise out of the pest control operator's attempting to perform a construction repair job that exceeds his

experience and abilities. A percentage of these claims arise out of code violations, or problems with the structure that the PCO did not even repair or work on.

"Guilt through association" claims contend that the inspector has some liability for areas that are outside the scope of a structural pest inspection. This problem is compounded by pest control operators who report on items that are outside the scope of a structural inspection.

Damage caused by treatment are typically caused by sub slab treatments. These claims include finished floor damage due to sub slab treatment holes, and damage to sub slab plumbing as a result of drilling the slab. While disclaimers are nice, when the technician drills through a slab exactly on the other side of the wall from where the gas clearly enters the structure, the technician is guilty of negligence, and in effect makes the disclaimer worthless.

Alleged pesticide exposure claims related to treatments for wood-destroying organisms are similar to the alleged pesticide exposure claims made for general pest treatments, as described previously.

Non-pesticide related personal injury claims are frequently more devastating than alleged pesticide exposure claims. The first group of this type of claim is generated through alleged faulty workmanship or missed problem allegedly causing injury. Decks and stairs are the most common construction elements to generate this type of claim. Alleged pest control technician negligence causing personal injury has been quite costly to our industry. The number one claim along these lines has been from consumers falling through crawl space access doors which are left open while the pest control operator is inspecting or working under the house. Be sure to block off access to the crawl space access door while you are working in these areas. Several of these claim settlements have been well into the six-figure range.

Errors and omissions are the largest area of losses within our general liability program. These claims allege that the inspector failed to note structural damage and infestations, which were visible and accessible at the time of original inspection. Of these, the most costly of these claims are fungus type claims. The most frequent infestation/damage "missed" by the inspector: fungi and damage in bathrooms and kitchens. The occasional *Poria Incrasata* claim is the most costly of the fungus claims. A few health mold claims have come in the past couple of years, but currently such claims are excluded from coverage. One of the things which cause so many of these errors and omissions claims is a failure to adequately educate the consumer about the legal and logistical imitations of wood destroying organism inspections.

Branch 1 fumigation claims have been a real challenge for many decades. One of the problems for fumigators is that they are such a small group, yet they have

such significant claims. There simply are not enough of them paying into the system to make it viable for most insurance companies. Fumigators generate more frequency and shock loss claims than their premiums can pay for. Historically methyl bromide claims were responsible for many of the problems. Losses associated with mercaptin odors and other methyl bromide problems historically account for the largest frequency loss area for fumigators. Fortunately methyl bromide claims are no longer an issue. But unfortunately these losses are still haunting us. Fumigators suffer from both this group of high frequency claims as well as shock losses. Shock losses are those such as deaths, severe health allegations, fires, and explosions. While most death losses settle for relatively small amounts, some settlements have been quite high. Unfortunately fumigators as an industry suffer from a shock loss about once every 18 months, whereas the industry premium base can only afford a shock loss once every 10-15 years. These shock losses combined with the frequency losses of fumigators have caused the California fumigator market to be a loser for insurance companies for some decades.

While methyl bromide claims may be a thing of the past, there are still plenty of frequency losses plaguing fumigators. Ongoing frequency loss areas include chloropicrin exposure, and property damage claims. Chloropicrin exposure claims typically involve the improper use (over application) of chloropicrin resulting in consumer complaints and medical claims, or problems with aeration. Roof damage claims are costly and in some cases difficult or impossible to defend. There are two main reasons for roof damage claims:

1. Failure to use an appropriate roof waiver (a consumer needs to be told that there will be damage to their Spanish tile roof, not just given a generic "roof damage may occur" disclaimer),
2. Negligence. No disclaimer can relieve one from liability if he does not use reasonable care to protect the consumer's property.

Additional roof damage type claims come from working in the rain, and trapping water on the roof. Commercial buildings with flat roofs are built with drains to keep the water load off the roof. When those drains are covered by our tarps, we create a giant swimming pool, which exceeds the maximum weight rating of such rooftops. We damage and destroy a lot of patio covers also; the two main causes for this claim are fumigators walking on light construction patio covers, and secondly rainwater becoming trapped on patio covers causing the patio cover to collapse.

There are many areas of common property damage caused by fumigators; broken windows, damage to exterior lights, plants and patio furniture, and the occasional Vikane glass etching are some of the other leading types of property damage caused by fumigators. Several fires have been started by fumigators who covered lights, which were either on a timer or some sensor, which causes the lamp to come on during the fumigation.

Most plant damage is usually relatively minor, with claims being under 5 thousand dollars. This damage is caused either by the crew, or by sensitive plants being burned by the fumigant. In other unfortunate situations fumigators have wrapped tarps around tree trunks which were close to structures or protruding through decks. This has resulted in the killing of some mature trees, and replacement costs as high as 40 thousand dollars.

Another challenge for fumigators is the risk of burglary. While fumigators typically use disclaimers, if a break-in takes place while the fumigator has control of a property, they are sometimes held responsible.

While the focus of this article is on general liability claims, I would be negligent if I failed to mention our auto losses. Auto insurance is a major cost to employers, and a leading loss area for the pest control industry. The most frequent losses are generated by rear-ender accidents, and backing up into stationary objects. Drivers following too close, attempting to brake too quickly (and causing the car behind them to rear-end them) and drivers looking at map books and paperwork are obvious causes of these costly and hazardous accidents.

You may find risk management resources in your monthly NewsBriefs and online at www.pestproinsurance.com. If you are insured through the PCOC insurance program marketed by Marsh, be sure to get the password from them so you can access more than 200 online resources, otherwise non-insureds have access to about 40 safety meetings and other resources.