

PROTECTING PEOPLE AND PROPERTY

Good **INSURANCE** and Robust **PROCEDURES** Help Townships **MINIMIZE RISK**

Townships, like commercial businesses, are vulnerable to property damage and loss, plus injury to employees and the public. While property and casualty insurance protects townships against such losses, municipalities must also practice good risk management to minimize the threat of claims and lawsuits.

BY BRENDA WILT / ASSISTANT EDITOR



We've all heard the stories... someone slips on the ice or trips on the sidewalk outside of a store and sues the store owner. Or a business is burglarized and the thief makes off with lots of expensive technology.

This is why commercial entities have property and casualty insurance. It protects them from their own loss and that of others who may be injured while on their property.

Do townships need to worry about these kinds of losses? You bet.

"Townships have a lot of the same exposures that for-profit businesses have," says Richard Atkinson, senior vice president of the HDH Group insurance firm. "Therefore, they require insurance to protect the taxpayers."

While there are many kinds of insurance townships can choose to carry, "property and casualty" is an umbrella term that describes a range of insurance types covering personal property and liability coverage. It does not include, among other things, life, health, or fire insurance.

To protect its interests, townships need to be proactive by purchasing enough of the right kinds of insurance and practicing good risk management to defend themselves against claims and lawsuits. The *News* turned to industry experts to get some tips and strategies to help townships address these concerns.

Protecting your and others' stuff

First, though, let's talk a bit more about property and casualty insurance in general. Property insurance protects township property, such as a municipal building and garage or park and playground against vandalism, theft, or other loss to a structure and/or its contents. In a nutshell, property insurance covers the stuff a township owns.

As severe weather increases due to climate change, property insurance becomes even more important — and pricey.

"Property insurance has been a nightmare for public entities in recent years," Bob Lombard, area president of RPS-PNP, a national program admin-

istrator for public entities, was quoted in an article for *Insurance Business* magazine. "These challenges have been widespread, regardless of whether it's a coastal exposure, tornado, fire exposure, or earthquake — it seems like no state is immune.

"Plus, public entities are also subject to what's going on in the greater world with respect to property insurance rates and the ability to acquire adequate [coverage]."

Still, property insurance is a necessity for townships so that they are protected against loss. Policies may cover such things as buildings and contents, equipment and breakdown, township-owned automobiles, and even emergency equipment, such as firetrucks and police vehicles if the township insures them.

Property insurance generally covers three types of loss:

- 1) Loss or damage to an article itself through theft or accident.
- 2) Loss of income from use of the article.
- 3) Extra expense incurred due to loss

of the article, such as having to rent space or equipment to continue operations after a loss.

Liability, or casualty, insurance, on the other hand, protects the township if it is found legally responsible for an accident that causes injuries to another person or their property. Liability coverage comprises several specialized categories.

A general liability policy protects the township and its boards, commissions, officials, employees, and volunteers from third-party actions alleging bodily injury, property damage, and personal injury resulting from the operations of the municipality or its ownership of the premises. A slip or fall by a person visiting the municipal building is a typical premise-type claim that would be covered under a general liability policy. Injuries to a township's own employees is also covered under workers' compensation, another type of liability coverage.

Originally limited to premises, general liability policies have been expanded to include operations, completed

"Generally, there seems to be a pronounced trend that courts are willing to expand liability against municipalities."



Townships need casualty, or liability, insurance to protect taxpayer money in case injury occurs to someone or their property at a township facility.



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operations, products, incidental medical payments, host liquor liability, and fire legal liability. It also extends coverage to personal and advertising injury exposures, such as libel and slander.

To be legally liable, the township or its agents must generally be guilty of negligence, or the failure to use proper care. If negligence results in harm to another person, the insured is responsible for the resulting damages.

General liability insurance typically does not cover police operations, employment practices, or wrongful acts by public officials (*see page 18 for more about this kind of insurance*). Townships

need to purchase additional policies to cover these categories.

A relatively new kind of liability insurance that is becoming increasingly popular is cyber coverage. This addresses a variety of both liability and property losses that may result from online transactions and activity.

Cyber and privacy policies cover a municipality's liability for a data breach in which personal information is exposed or stolen by a hacker. Covered losses may include notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft.

"Any township has information in its computer system that it needs to protect," Atkinson of the HDH Group says. "If they fail, there may be consequences."

Local governments would be wise to err on the side of caution and purchase the coverage, he says, and this insurance usually comes as a stand-alone policy. Some insurance companies offer a cyber endorsement as part of a general liability policy, but it doesn't offer as much coverage.

"That's not the way to do it," Atkinson says. "It's not a smart risk management approach."

Limiting municipal liability

Anyone who reads the paper or consumes news knows that people sue for big money these days — and often get it. Thankfully, there is a limit to the amount that public entities can be liable for, with some notable exceptions.

At one time, municipalities and their agents enjoyed sovereign immunity, meaning that no matter how badly they screwed up, they couldn't be touched. That changed in 1973 when the Pennsylvania Supreme Court ruled that municipalities and municipal officials were responsible for their acts under the same legal standing as corporations and individuals.

As lawsuits increased, local governments begged the General Assembly for relief, and in 1978, it passed the Political Subdivision Tort Claims (*Governmental Immunity*) Act. This re-established the concept of governmental immunity except in eight areas where a municipality could be held liable. It also limited or capped damages at a maximum of \$500,000 per occurrence.

The exceptions to immunity include such instances as:

- operation of a motor vehicle owned or controlled by the municipality;
- a known dangerous condition of traffic lights, streetlights, traffic controls, or trees under the care, custody, or control of the political subdivision;
- a dangerous condition of steam, water, sewer, electric, and gas systems owned by the political subdivision; and
- a dangerous condition of streets or sidewalks owned by the municipality.

"When it comes to [governmental] immunity, realize that there is always someone out there trying to push the envelope," Atkinson says. "One day, it is going to be pierced. It's important to know what the protections are, but don't rely on it to set coverage limits because some day it is going to change."

In fact, in 2019, Gov. Tom Wolf signed an amendment to the Tort Claims Act that created an additional exception removing governmental immunity as a defense to any claim of per-



Although government entities have some immunity from liability, there are exceptions to their protection. Among them are, clockwise from top left, operation of vehicles owned or controlled by the municipality; a dangerous condition of a public water system; a known dangerous condition of a traffic control device; and a dangerous condition of municipal streets.

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sonal injury caused by a negligent act of an employee resulting in sexual abuse of a minor. The amendment also removed the damages cap for instances of sexual abuse and significantly extended the statute of limitations to 55 years of age for claimants who were abused before the age of 18.

“It is very important for municipalities when making insurance decisions to discuss the amendment with potential carriers,” attorney Anthony Sherr of the Sherr Law Group says. “Generally, there seems to be a pronounced trend that courts are willing to expand liability against municipalities. Under the Tort Claims Act, immunity is sup-

posed to be narrowly construed, and courts don’t seem to be following that as much.”

Determining what your township needs

Deciding what kind and how much insurance your township needs involves some work on the township’s part. To ensure that you protect all your assets, you need to know what they are, and an inventory and physical inspection are good first steps, Paul Pugielli, senior vice president of Brown & Brown Insurance in Bethlehem, says.

Atkinson of the HDH Group recommends getting assets appraised to ensure that coverage is adequate to replace them if necessary. You want to know their insurance replacement value, rather than market value, he says.

“Insurance replacement value is always going to be substantially higher than market value,” he says.

All buildings and their contents should be included, as well as parks, recreation areas, and equipment and other physical assets. According to

the *Risk Manager’s Insurance Guide*, available from the state Department of Community and Economic Development, coverage is based on location. If a property location is not shown on the policy, it may not be insured.

In addition to inventorying facilities, township officials should make sure they understand who is responsible for their maintenance and security, attorney Anthony Sherr says.

“Establish proper protocols that show you are caring for your facilities,” he advises.

Next, the township should review its operations and think about potential exposures, Pugielli says.

“Your insurance agent or broker may have a checklist you can use,” he says. “This will help you to structure insurance accordingly.”

The township should also review past claims or “near misses,” he advises, to see where vulnerabilities exist. Finally, township officials need to gauge the level of risk taking they are comfortable with — in other words, how high a deductible they are willing to assume.



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Tyrone Township in Adams County, for example, has a fund to cover smaller losses, board chairman Russ Raub says. Consequently, the township rarely has insurance claims.

"We only use insurance for catastrophic loss," he says.

This review of the township's assets, operations, and vulnerabilities should be done at least annually, Pugielli says.

"Plus, anytime the township changes operations, such as having a zipline during an event, or adds an asset, such as a dog park, it should contact its agent or broker to discuss necessary changes to its coverage," he says.

When deciding on the amount of coverage, a one-size-fits-all approach doesn't work, Pugielli says.

"All policies carry a basic \$1 million limit," he says. "The question is, how much of an umbrella policy do you want?"

If a township has a police department, for example, a verdict in a wrongful death suit could go well over \$1 million. A township without its own police wouldn't have that kind of exposure.

Some townships insure firetrucks and ambulances for their emergency services departments, which would call for a higher limit, he says.

Then, there's the increase in what are referred to as "nuclear verdicts," he says.

"In the last three to five years, we're seeing multimillion-dollar verdicts coming out of the courts," Pugielli says. "Coverages and limits are specific to each municipality based on their needs, and then you have to try to figure in where these verdicts are going."

Townships need not go it alone when determining its insurance needs, though.

"Pick a competent adviser to help your township through the process," Atkinson says. "There is no way a township official can spend the time and effort to develop the necessary expertise. You need someone to help guide you — an agent or broker — but also other advisers, such as the township solicitor and financial experts." (See page 30 to learn more about insurance brokers.)

Township officials should also ask themselves what they want to achieve — broad coverage, lowest cost, or something in between, he says.

The best defense is a good offense

Sooner or later, you're going to have an insurance claim. Property claims are fairly straightforward: Your property is damaged so you file a claim to get reimbursed for the loss.

A liability claim is another matter, though. In essence, such a claim states that the township's negligence allowed the injury or damage to occur. Townships should be proactive to deal with these kinds of claims, Atkinson says.

"The best defense of a claim begins

before the claim ever happens," he says. "If you wait until it happens, you're already too late."

Good risk management practices are the key to avoiding claims.

"Develop strong policies and procedures for everything you do," Atkinson says. "Make sure they are written down; documentation is key."

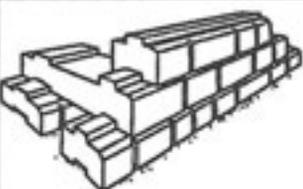
It's not enough to have them in writing, though. Township supervisors need to make sure the procedures are followed "zealously," he says, and then document that they have been. ➤

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“One of the great protections of the Tort Claims Act is that it only holds townships liable for things they know about and fail to correct,” Atkinson says. “If you have documentation that shows when you learned about a problem and what you are doing to address it, you should be covered.”

If a claim is filed against the township, don’t automatically admit liability, Pugielli of Brown & Brown Insurance says. It’s better to wait until fault is officially established through investigation.

Townships should also be proactive when allowing outside groups to use their facilities, Atkinson says.

“Whether it’s youth sports leagues

using playing fields or groups using the township building, look at it from a risk management standpoint,” he says. “Make sure the township maintains the facilities in the safest possible manner.”

The township should also make sure that any groups using its facilities have the right kind of insurance and consider whether the township should be named as an additional insured on the policy. Finally, the township should rely on its professional adviser to make sure its own policies are crafted to protect the township.

If an incident occurs in a township facility, document as much as you can at the time, Atkinson says. Interview witnesses, take photos of any damage, and gather as much information as possible. This will be crucial in the event of a claim or even lawsuit.

Oh, no — we’ve been sued!

Despite a township’s best efforts, it may one day be sued over an injury or accident to someone. If that happens, there are several steps the township should take immediately.

Experts agree that first, the township should notify its insurance carrier.

“Your carrier will direct you on how to defend against the claim — whether to fight it or settle,” Atkinson says.

If the carrier chooses to fight it, it will likely hire a lawyer with expertise in that area, Sherr says.

“I have seen so many situations where a municipality goes out and hires a lawyer when it is something that would be covered by their insurance,” he says. “Call your insurer first to avoid that unnecessary expense.”

Next, the township should act to preserve everything related to the incident.

“Send an email to everyone involved and tell them to keep everything,” Sherr says, including emails and texts.

As stated before, don’t admit liability or fault; wait for the investigation, Pugielli says. If the township receives right-to-know requests related to the suit, be careful what you release and to whom, especially during an active investigation or litigation.

Finally, the township should contact its solicitor, Sherr says.

“You are going to need legal counsel,” he says. “Once you get past these steps, your solicitor will advise your next move.”

COVID coverage?

For the most part, townships face garden-variety claims — someone gets injured on a playground or a pothole causes damage to someone’s car. New situations and threats emerge all the time, however — can you say “global pandemic”? — and it can take a while for insurance companies to catch up.

Even industry insiders can’t agree on what will happen with insurance involving COVID-19 claims.

“At this point, no coverage is available,” Pugielli says. “When insurance companies price their products, they base it on actuarial data. With pandemics, you can’t do any actuarial analysis because they are too infrequent.”

Insurance doesn’t cover claims related to wars, nuclear radiation, and other infrequent occurrences, he points out.

“I don’t see insurance companies covering pandemic claims,” he says.

Atkinson, however, says that changes will come to insurance because of the

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COVID-19 crisis, but “we won’t know what they will look like for several years.”

Policy language evolves in response to litigation over what is covered or not, he says. As cases move through the court system, insurance policies may change.

“Right now, insurance carriers would say that business income coverage, for example, only applies to covered loss,” he says. “They would ask where the physical loss is to a covered property, such as a restaurant. However, there is a claim in Louisiana arguing that the virus attaches itself to physical property — chairs, tables, etc., so it should be covered.”

An insurance policy is a “contract of adhesion,” Atkinson says. If there are any gray areas, they are generally interpreted against the insurer.

“Whatever the courts say about COVID-19 claims, the insurance industry will react and change the policy language,” he says. “Premiums will either increase to provide coverage or language will be rewritten to exclude it.”

The pandemic could lead to potential liability for townships, Sherr says. As municipalities allow people back onto their property, they need to make sure they follow state and federal guidelines to minimize risk of exposure.

“If someone gets sick, they could claim that the township did not exercise care and control of their property,” he says.

All of this is speculation, of course, until courts make rulings and insurance companies make changes.

In the meantime, townships should address what they can right now: Take a good look at their assets and vulnerabilities to ensure that they get enough of the right kinds of property and casualty insurance and then practice good risk management to minimize the likelihood of claims and lawsuits. ♦

Cyber liability: Is your township covered?



Cyberattacks on municipalities are increasing at an alarming rate. There were at least 174 ransomware attacks on municipalities in 2019, according to antivirus software provider Kaspersky.

“If you have data about your residents, that’s valuable information to bad actors,” says Matthew Meade, an attorney for Eckert Seamans Cherin & Mellott. “The size of the municipality doesn’t matter. It’s the kind of data you have.”

Consequently, townships may want to consider cyber liability insurance. East Hempfield Township in Lancaster County had its system attacked by ransomware last January and fortunately, had insurance to help cover the costs of recovering from the attacks.

Many insurance companies have attorneys and cybersecurity firms that they work with regularly.

“Our insurance company connected us to an attorney in New York, who connected us to an IT forensics company, which immediately started to investigate to see if any of our files had migrated out of the system,” East Hempfield Township manager Cindy Schweitzer says.

The township supervisors had been considering cyber insurance for a couple of years but balked at the cost, she says. As more government entities became victims of ransomware, they finally approved a basic \$1 million policy in May 2019. The township was hacked less than a year later.

The policy’s \$10,000 deductible and \$5,250 premium are still a lot less than the \$50,000 to \$60,000 cost of the restoration after the ransomware attack, Schweitzer says.

Townships may want to consider a cyber liability policy to cover the cost of a data breach and a crime policy to cover theft by deception.

It is important to have an insurance company that has experience with cyberattacks. When the Centre County Recycling and Refuse Authority experienced a cyberattack in

2018, its local agent had never been down the ransomware road and couldn’t provide any advice or direction.

“We learned to have the right insurance coverage,” authority executive director Ted Onufrak says. “Now, we have \$25,000 coverage for hardware and software and \$100,000 coverage if employee information is compromised.”

Many insurance policies also pay for a year of ID monitoring after a cyberattack.

“Cyber liability insurance is like flossing and brushing your teeth,” Meade says. “You don’t think it’s necessary until you get a cavity.”

You don’t want to scramble to find a cybersecurity consultant and other necessary helpers during a breach, he says. An insurance policy likely includes a bundled package of vendors at a guaranteed rate to handle investigations, credit monitoring, mail notifications, crisis communications, and more.

“There are lots of moving parts when recovering from a cyberattack,” Meade says, “and most of it would be covered with a good policy.”

When considering the expense of cyber insurance, townships need to consider all the costs of a cyberattack. In addition to restoration costs, there is the time the system is down, extra hours that may be required of staff, and a potential dip in the township’s credit rating, which can affect bond issues.

Townships that already have cyber liability coverage should be sure it remains up to date, PSATS Counsel Scott Coburn says. This is particularly an issue for townships handling payments and taking credit cards. If they do not have robust IT protection, their liability risk increases.

“They become ripe for hacking, and their residents’ information can be exposed,” he says. “Sit down with your insurance broker and find out what is covered under your policy and make sure it is changing with the times.”