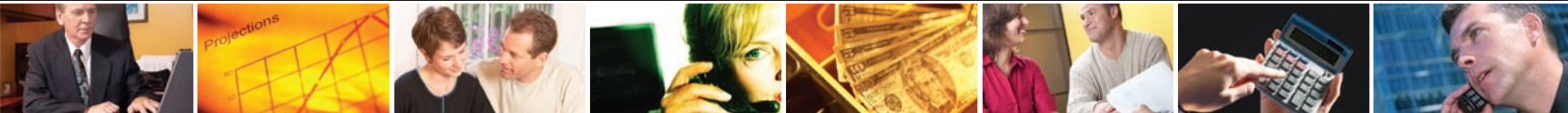


# Risk Monitor



## Understanding the Role of Loss Mitigation Insurance

Loss Mitigation Insurance transfers an unknown or unwanted exposure from one company to an insurance company for a price. LMI caps what would otherwise be an unknown amount and is particularly effective if the company with the liability is in the process of merging or being acquired.

Employers of all sizes can benefit from a LMI policy. The coverage helps risk managers dispose of costly litigation that could damage the bottom-line and impair their ability to complete a refinancing arrangement. Before LMI, when an uncertainty in a merger or acquisition came up, both sides walked away until the lawsuit or financial impediment was resolved.

One solution used in such cases required the seller to deposit funds into an escrow account to cover the estimated losses from the claim or lawsuit. This tied up capital and there was no guarantee that the amount deposited would be enough to cover the final settlement. With a LMI policy, these problems can be resolved and the transaction put on track again.

### LMI Takes Many Forms

There are several ways in which LMI programs can be structured. LMI can be underwritten to apply either in conjunction with, or independent of other insurance in force, such as Directors and Officers liability or general liability. For example, a deal to merge ABC Company with XYZ was delayed because of XYZ's concern over the catastrophic exposure for a potentially adverse judgment against ABC. ABC arranged for a LMI policy to be written which responds if the loss exceeds the limits of ABC's existing liability insurance. LMI relieved ABC of a potentially damaging award and the merger proceeded.

Another example of how a LMI policy helped solve a legal problem within a rigid time limit involved a consumer products

company that was in the final stages of buying a company in an Eastern European country. The target company had been involved in litigation with a former employee regarding a patent and though most of the complaint had been dismissed, and a damage analysis of the remaining counts showed potential damages to be minimal, the purchasing company was reluctant to move forward. Further, the acquiring company's option to purchase the Eastern European company was to expire in less than three months.

Although the investor wanted to exercise its option to purchase the company within the time limit, the patent litigation would not be resolved before that date. Also, the investing company was unfamiliar with the legal system in the target company's country, which caused further concern. The solution: a LMI program was purchased by the target company that would cover excess losses from future settlements of the patent claim and the acquisition was completed before the time limit expired.

### Premium Commitment

The size of the premium for a LMI policy depends on a combination of the risk analysis by the underwriter and the policy's structure. Most LMI contracts are structured so the policy's limits are never reached. If the policy is not breached, there is no claim. Because the risks covered by LMI policies usually have lengthy tails, it takes a long time for them to be settled, which permits insurers to realize investment gains from collected premiums.

Although LMI has only been written for a little more than five years, premium volume has skyrocketed from zero to more than \$500 million annually in this time. Insurers are writing more

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### Great News:

The new claims reporting system is up & running. Your support staff receives all 50 state forms & osha reporting on-line. Management gains some impressive reporting improvements. Please contact your agent or claims support representative for training and a password.

**TOBIAS**  
INSURANCE GROUP, INC.

**Tobias Insurance Group, Inc.**

9247 North Meridian Street, Suite 300  
P.O. Box 90380  
Indianapolis, IN 46290

Phone: (317) 844-7759  
Fax: (317) 844-9910  
Website: <http://www.tobias.com>



# Consider Preemployment Testing to Reduce Employee Lawsuits

Employees who sue their employers for discrimination, denial of workers compensation benefits, or unfair employment practices can harm a company, not only economically, but its reputation as an employer and a corporate citizen. One method being used more often by businesses to reduce employee lawsuits is preemployment testing. Implementing this process correctly can result in hiring employees who are not only best suited for the job, but by reducing employee lawsuits, you could lower the cost of your employment practices liability insurance.

Though preemployment testing has been proven effective in identifying individuals who are likely to file lawsuits, unfortunately, many employers fear they can be sued for just administering such tests. But, by vigilantly preparing and evaluating preemployment tests and conducting them uniformly, the practice can be a valuable, additional tool in selecting the right employees for your company.

Preemployment testing can include skills tests, endurance tests, physical agility tests, psychological tests, integrity tests, and educational proficiency exams. Employers with 15 or more employees are required by the federal government to monitor the impact of all tests – formal, informal, oral or written, objective or subjective – to insure that they do not negatively affect specific population groups.

Generally to be legally administered, preemployment tests must meet certain criteria. They must measure qualities and traits that have high relevancy to job performance; the content of a test must reflect the skills required to do the actual job; and if the test is designed to measure a certain trait or characteristic, determining the value of having such a trait must relate directly to job duties and performance.

Before developing preemployment tests or hiring a testing firm, you should determine if these tests are really necessary. If you find them necessary, you should meticulously document the reason you are conducting the preemployment test. Keep thorough statistics to measure any adverse impact on specific

populations, which could produce discrimination problems. Eliminate any test parts that are producing negative results.

Testing for disabled applicants demands that additional guidelines and restrictions be followed. Disabled applicants who have sensory, manual, or speaking disabilities must be administered tests that reflect their skills, aptitudes, and the factors required to do the job, and not their disabilities. Special arrangements must be made to test the disabled. Such arrangements may include providing a reader, sign interpreter, large print or Braille, giving the applicant more time to complete the test and making testing facilities easily accessible. Testing applicants for AIDS before and after a conditional job offer is not wise and could lead to serious legal difficulties, unless a genuine business requirement exists that would rule out a person with AIDS from performing the job.

According to a survey sponsored by the Chubb Group of Insurance Companies, 26% of executives at privately held companies reported an employee or former employee had sued their companies, and 22% reported having an employee file a discrimination or harassment complaint with the Equal Employment Opportunity Commission or other state agency during the past few years. Furthermore, 44% of executives said it is likely that an employee or former employee will sue their company in 2004, and 50% said it is likely that an employee will file a complaint with the Equal Employment Opportunity Commission this year. More than half the executives surveyed estimated it would cost more than \$100,000 to settle an employment discrimination or harassment lawsuit. Ten percent said it would cost at least \$1 million.

Conducting proper preemployment testing can not only reduce discrimination claims, but also help you hire productive staff, and decrease absenteeism and staff turnover. If you have not already considered employment practices liability insurance, give us a call for more information about this important coverage.

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## Understanding the Role of Loss Mitigation Insurance

of this coverage because underwriters have become more experienced in determining the extent of the exposure as well as drafting and pricing the appropriate policies.

An insurer's willingness to underwrite LMI depends on the state of the insurance market and the availability of

reinsurance. If the insurance market hardens, insurers have less access to the capital to support their underwriting efforts. In a soft market, insurers seek out opportunities to expand premium volume and are more willing to write LMI.

# Contingent Business Interruption Insurance

## Can Keep Your Doors Open



Overseas outsourcing is quickly becoming indispensable for many industries to speed up production and reduce overhead. However, if one or more of your suppliers, some thousands of miles away, shuts down and fails to deliver goods or services on time, the impact to your bottom line could be substantial.

To reduce the uncertainty associated with overseas (and domestic) outsourcing, you should consider Contingent Business Interruption (CBI) insurance. Also known as contingent business income or dependent properties insurance, such coverage reimburses your business for lost profits resulting from a supply chain interruption. This coverage may be added to a standard property policy or written as stand-alone coverage.

CBI protects a business against interruption and extra expense losses resulting from damage caused by an insured peril to property that it does not own, operate, or control but whose operation is crucial to its continued operations. CBI does not protect against the interruption of your business from damage to your own plants or operations.



CBI usually covers loss of profit, loss of revenue, and liquidated damages. Policies can be arranged to cover third party strikes, political risks, pollution & contamination, epidemic & disease, denial of access and terrorism. Coverage for other perils may be included depending on the circumstances.

### **Generally, four distinct types of properties are covered by CBI:**

1. A contributing property is a single supplier or a few suppliers for materials the insured depends upon almost exclusively to complete its products.
2. A manufacturing property exists when the insured depends on one or a few manufacturers for most of its merchandise.

3. A recipient property defined is one or a few businesses that purchase the bulk of the insured's products.
4. A leader property is a business that is a close neighbor of the insured and which helps bring in customers to the insured.

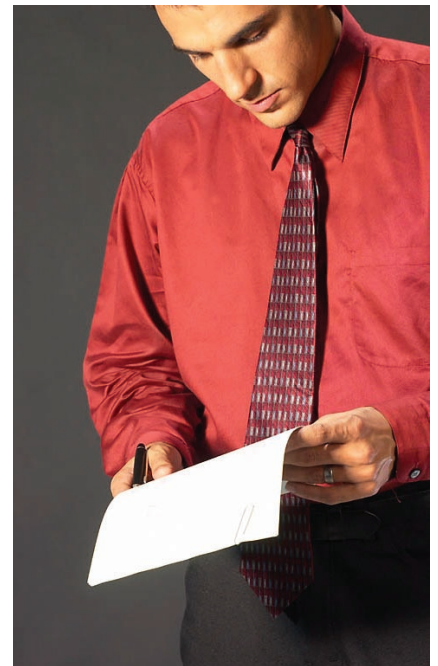
CBI policies usually have a stated "waiting period" that applies to business income losses. Waiting periods can last from 8 hours to 7 days or more. Since many policyholders suffer their greatest income loss and expense during the first hours and days following a disaster, strive to get the waiting period eliminated or reduced substantially with your policy. Or try to get a "known dollar deductible" instead of a waiting period. You will still have to bear some loss, but any amount above the deductible will be covered in full.

When you apply for CBI, the insurance underwriter will request numerous reports and data from you, mainly information about your business' suppliers. Such requests may include loss prevention and contingency plans from your major suppliers.

The cost of a CBI policy depends on a number of factors, including your business type, your dependency on one or more of your suppliers, and the degree of loss control practiced by your suppliers. As always, providing complete information to the underwriter, will provide the most accurate pricing.

For a company to file a claim on its CBI policy, a supplier or customer does not have to be totally shut down. Rather, an insured loss has to occur at a specified location and the insured's business interrupted as a result.

As a risk manager, you need to carefully proceed through several steps before purchasing a CBI policy. First, identify and understand the impact of other businesses on your operations. Second, develop a formalized business continuity plan. Third, evaluate what properties would be covered and ascertain the correct policy wording and limits for your circumstances. Fourth, in advance of a claim know what you need to identify potential areas of loss and document them thoroughly.



# Securing Auto Insurance for a Foreign Employee

For a foreign employee temporarily transferred to work in the U.S., getting permission to own and drive a car can be a long and tedious process. Before the non-U.S. citizen can apply and be granted a driver's license, in most states he or she must be issued a social security card, which usually takes two to eight weeks. Also, most auto insurance companies will only insure a driver with a valid driver's license. Finally, large corporations usually impose their own practices and rules on foreign nationals to protect them against liability in case the non-U.S. employee has an accident.

An insurance agent or broker that is familiar with the licensing and insurance requirements in each state can often help ease the process of a non-U.S. citizen acquiring a driver's license and insurance coverage.

Lately, in an attempt to encourage global trade, many states have arranged driver's license reciprocity agreements with other countries. These agreements usually exempt foreign drivers from having to obtain a driver's license in the state where they are temporarily living. Whether a specific state has reciprocity with another country can be determined by calling the state's department of motor vehicles.

An example of a state that has accepted some reciprocity with other countries is New York. In New York, the foreigner holding a driver's license from his or her own country does not need to apply for a New York license unless they become a permanent resident of New York.

Once the requirements for a driver's license are met, there are several insurance companies that will provide coverage to foreign visitors. Usually these are "non-standard" divisions within the insurers.

Because obtaining a driving record from a foreign country is difficult and time consuming, underwriters regard persons from another country as having no driving record and usually place them in a "high-risk" pool. The policy is the same as for any high-risk driver, with premiums substantially more than those paid by a U.S. driver with an excellent driving record.

When applying for auto insurance in most states an International Driving Permit will not substitute for a U.S. driver's license. An IDP only provides evidence that the non-U.S. citizen has a valid driver's license in his or her own country. An IDP, however, will enable a foreign national to rent a car.

Although renting a car may be feasible for a brief stay of several weeks or even a month, the cost of the various insurance coverages, especially the collision damage waiver, offered by rental car companies can be expensive. Charges for such coverage can be \$15 to \$40 per day depending on the type of vehicle rented. In just a month or two these charges could add up to much more than the cost of a six-month auto insurance policy.

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**TOBIAS**  
INSURANCE GROUP, INC.

9247 North Meridian Street, Suite 300  
P.O. Box 90380  
Indianapolis, IN 46290

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