

NEWS LETTER

n.p. james insurance agency



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THE TROUBLE WITH CONTRACTS

Contracts, Risk, and Your Insurance

Gone are the days of Digital, Wang, Prime, Cullinet, Apollo, Data General, among other technology giants; the current profile of Massachusetts' technology business is smaller components manufacturers, software shops, middle industry parts and service providers. With local tech companies on the short-end of the contract stick, managing risks and exposures is increasingly important. A review of both your contracts and increased risks should be undertaken, with strategies to limit those risks. If contractual limitations are impossible, other means, such as transfer to your insurer, should be fully utilized.

Insurance Response

Your commercial insurance program probably does cover:

- Waiver of subrogation against your landlord — your lease is usually covered under "Limited Contractual" coverage
- General liability obligations required under most contracts for standard limits (including Bodily Injury and Property Damage)
- Workers Compensation coverage for most contractual obligation language
- Most "hold harmless" clauses found in leases.

Your commercial insurance program probably does NOT cover:

- Intellectual property infringement indemnification
- Pollution
- Employee non-disclosure agreements
- Indemnification for your landlord's building contractors
- Most "any and all causes" clauses
- "Your insurer will honor all the terms of this contract" language provisions

Intellectual Property in Contracts

- and Your Insurance

Most software licensing agreements contain clauses regarding intellectual property infringement, usually indemnifying the client for any IP infringement complaints. Rarely are these clauses supported by insurance, which is important to understand should problems occur. Remember, your contracted indemnification agreements do not obligate your insurer beyond their existing policy terms! *Indemnification* is a term associated with a financial promise to provide legal defense and damage awards for claims.

What may be covered to some extent on your *General Liability / Property policy*:

- Trademarked or Service Marked titles or slogans
- Copyrighted advertising materials

IP exposures usually covered by an *Internet Liability* policy:

- Copyright Infringement
- Infringement of Title
- Infringement of Trade Name
- Infringement of Trademark
- Infringement of Slogan

IP exposures not covered:

- Patent Infringement (You may secure patent infringement offense and/or defense coverage through specialty markets). Applications require an opinion letter, which can also be secured specifically for insurance purposes.
- Trade Secret Infringement

This outline serves primarily as a benchmark warning to recognize areas, that should be reviewed by professionals who can alert you to risks and exposures. Always let your agent and insurer know about those insurance related sections of the contracts you sign.

Nancy James will be speaking to

**American Society of
Women Accountants**

"Shark-Infested Cyberspace"

November 16, 2005

Nancy P. James is the principal of N.P. James Insurance Agency in Concord, MA, where she specializes in risk analysis and insurance for technology-based and manufacturing clients. Nancy is a licensed insurance advisor and frequent author and speaker in the technology risk area. She can be reached at 978-369-2771 or npjames@npjames.com.

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CONTRACTS—

HOW INSURANCE RESPONDS

TO COMMON CONTRACT PROVISIONS

The Ugly Truth About Flood Insurance is.....

.....that people on high ground don't buy it!! Thus, for flood-prone areas the expectation of loss over time is 100%!! So what premium do you charge for \$40,000 in flood coverage? Why, \$40,000 of course (over a 5-10 year period). Look good price-wise? No?

Then, why don't we force insurers to cover it on all of our policies? Well, then you would be paying your share of all flood-prone properties. That's why! [*No home insurer offers flood coverage*]

Then, why doesn't the federal government provide a tax dollar subsidized program to help residents in coastal and flood-prone areas? It does — it's called the National Flood Insurance Program, initiated in 1968.

thoughts by Nancy P. James

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