

Your BUSINESS

Spring 2016 • New Jersey



VIA INSURANCE & FINANCIAL SERVICES

VALVANO INSURANCE AGENCY

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Sidewalk repair

Now is the time of year when we engage in the time honored tradition of spring cleaning. When you are making your to-do list for your business don't forget to add: your sidewalks.

Repeated cycles of freezing and thawing can cause sidewalks to crack and heave, creating a potentially hazardous situation for anyone trying to navigate the uneven terrain. The danger is easily recognizable, but whose responsibility is it to remedy that danger? The answer may surprise you. Going back hundreds of years to early English Common Law, it always has been the responsibility of the government to repair defects in sidewalks. However, that recently has begun to change. Many municipalities now have ordinances delegating the duty to repair damaged sidewalks to the property owner whose property

abuts the damaged sidewalk. Many municipalities offer to contract for the repairs to the damage walkways, but ultimately, the cost of those repairs still falls on the property owner.

What are the consequences for failing to fix a damaged sidewalk? Before 1981 there weren't any. Prior to 1981, New Jersey was a "no-liability" state, meaning that if someone fell on your sidewalk, you would not be liable for damages provided you did not actively cause the defect that led to the accident. However, in 1981, the New Jersey Supreme Court issued a ruling in the case of *Stewart v. 104 Wallace Street Inc.* which completely changed the rules of sidewalk liability at least for commercial property owners. In that case, the court held that commercial property owners are responsible for maintaining in reasonably good condition the sidewalks abutting

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their property and they are liable to pedestrians injured as a result of their negligent failure to do so. The court went on to hold that a reasonable standard of care would apply to sidewalk cases that they felt would alleviate any concern that liability might arise from minor flaws or stretches of unevenness in sidewalks. Beyond commercial property, it is important to note that while the court did not extend this duty to residential property ownership, many municipal ordinances have. As such, it is important you check your municipality's ordinances to determine what your responsibility is.

Company outings

Now is the season for company picnics, business retreats and other work-sponsored summer events. With these comes additional liability issues for employers. From workers' compensation claims to impaired driving accidents or sexual-harassment charges, special events can expose employers to serious risks.

Here is a common scenario—Your company gives its employees half a day and hosts an employee-appreciation picnic during the second half of the work day to honor the hard work they've put in this quarter. What happens if an employee is injured during the event? Is he or she entitled to any workers' compensation benefits?

If your company picnic is held during normal working hours, then employees may be considered to have been attending within the course of employment. To determine whether

the picnic was within the course of employment, courts will examine the following:

- whether employees were required to attend;
- the degree of sponsorship or participation by the company
- whether the event took place on company property;
- whether the event was held during business hours; and
- the frequency of such events.

Several courts have recognized that an employee's voluntary attendance at an employer-sponsored event—off the employer's premises and outside of normal working hours—cannot reasonably be viewed as conduct within the scope of his or her employment.

However, if it appears employees were assigned to attend the event, they may receive benefits. For example, if your employees are tasked with choosing

between attending the company picnic or using time off, it may appear their job assignment for that day required them to attend. Therefore, the employee may be entitled to workers' compensation benefits for any injuries that occur during the picnic.

It is important for your company not to require attendance at company-sponsored events. Mandatory attendance at functions can result in workers' compensation claims if one of your attending employees is injured. In that case, the employee will be considered to have been acting in the course of employment.

If you are planning a company-sponsored event this summer, be sure to take precautions to minimize your risks. Taking a little time to plan can help make your event safe and fun! Contact our agency, to make sure you have all the proper coverage in place.





Catastrophes and your business

Preparing now can help you and your business weather any storm. Have you given any thought to what you would do if the worst-case scenario affected your business? Before anything happens, we can discuss all the business insurance coverages available to you before you need them.

A typical commercial property policy covers events such as fire, windstorm and tornado. Unfortunately, if flood is covered on a separate National Flood Insurance Policy, neither your extra expenses nor business interruption will be covered, as NFIP flood policies do not provide this coverage, and flood is not covered under a typical business owners policy.

Here are some helpful tips that will make a catastrophic experience less stressful:

- Your safety is important. Do not return to your business until authorities have signaled the all clear.
- When you approach the business, look for unsafe conditions

(e.g., downed power lines; the smell of natural gas; and unstable structural conditions).

- If it is safe to proceed, proactively shut off the utilities (e.g., electricity, natural gas and water) before inspecting the damage.

“We can discuss all the business insurance coverages available to you before you need them.”

- Do not drink tap water until you know it is safe to drink. While you are surveying the damage to your business, take copious pictures and make any temporary repairs necessary to make your business safe.

Once you’ve noted any damage to your business, give us a call. We can remind you of the insurance coverages you have to help you. Some of these will include:

- Business-interruption insurance—which will cover any losses due to your business’s inability to function;
- Extra-expense coverage—which will pay for the additional expense you incur to resume your business operations at another location; and
- Business-income coverage—which will pay your continuing expenses and enough income to place you in the same financial position had you not incurred the property damage).

Once you’ve filed a claim, an adjuster will arrive to assess the damage. He or she will attempt to determine the cause of damage. Next, the adjuster will itemize the damaged property. You will want to make sure nothing is overlooked. The placement of values on the damaged property will not occur at this time. Appraisals, repair estimates and inventories will be obtained later to establish values.

We will be with you every step of the way. If you have questions, give us a call. We’ll be happy to help.



Mobile equipment vs. auto

Bulldozers, farm machinery and forklifts! Oh my! Where will protection come from? Is it your business auto policy or your commercial general liability policy?

In most cases, it will be fairly easy to make this determination, but sometimes it gets complicated. Of course, it won't be a critical distinction if the same insurance company writes both policies. In that case, each policy has the same definition of mobile equipment and autos, so any land vehicle will fall on one side or the other; and the common insurer will have no option but to pay the claim. However, the limits of these policies may be different, so *that* could be something to consider.

In addition, the premium you pay will be decided by which policy the vehicle is assigned. Mobile equipment is included in the overall premium of the CGL policy. Autos are rated on a per-vehicle basis. Naturally, you will want to

place as many vehicles as possible on the CGL side in order to limit your premium expense.

If the BAP and the CGL policies are written by different insurance companies, there is potential for conflict if a claim occurs. You don't want to wait until this happens before making the mobile equipment vs. auto determination. Whether for rating purposes or for coverage purposes, it is a good idea to attempt to settle the matter up front.

Most insurance companies have adopted policy language that stipulate a vehicle to be an auto when it is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. If not subject to a compulsory or financial responsibility law, then you need to dig deeper into the policy definitions. Our agency will assist you with this task. Give us a call, and let's first try to get both your BAP and CGL policy with the same insurer. Then we can make sure you pay the appropriate premium.



News from our agency

Our focus is excellence

You've spent countless hours developing a business plan. You've hired a talented staff and purchased office equipment to get things up and running. You've burned the midnight oil and worked numerous weekends to build your business. And, if a lawsuit or natural disaster strikes, or some other crisis sends your company into frenzy, your smooth operating machine won't be lost—because you've bought basic insurance, right? As an independent agency, our goal is to assist you in all your insurance needs. We will help you manage and plan for all your potential risks. As professionals, we assess your needs and offer you a variety of insurance products to choose from. Personal service, whether it is in response to an insurance claim or your questions, is the most important value we offer.

Our employees work hard to build a trusted relationship with our customers. We strive to make you feel both comfortable and confident with our abilities by acting as your consultant. We are dedicated to our customers and we work with companies that offer you the coverages you need at a fair price.

