

Representing The Wiping Materials, Recycled Clothing, New Textile By Products and Fiber Industries



President's Column

Bill Schapiro

In part one of my column, "How I almost lost \$600,000 in one day," I talked about the very tricky area of sales tax law and how, but for legal malpractice insurance and the integrity of my lawyer who admitted a mistake, I could have lost \$250,000 in taxes and penalties.

During that same week, our forklift operator in our Miami operation hit a support pole and damage exceeded \$300,000. What a week I was having!

Over the years I have come to be cautious whenever I am about to congratulate myself on being a smart businessman. There are just too many times when events have proven me to be considerably less than brilliant.

And this was certainly the case in April of 2005 when our employee hit that pole! A year prior, in 2004, my friend (and now a SMART member by the way) David Jay of the Jay Group, a major factor in the return shoe business, invited me to sublease a significant portion of a warehouse that he was renting in Miami. We had built up trust over the years with David, and we entered essentially into a "handshake" month-to-month lease.

How smart I thought I was. At the time, I was uncertain about the direction I wanted to take in Miami and an informal month-to-month lease gave us the ultimate flexibility.

But what I had done could have been disastrous. I thought for sure the \$300,000 damage done by my forklift operator would be covered by insurance. If this wasn't covered, what is insurance for?

What I came to learn is that in most cases, the landlord's insurance pays for property damage of this sort, the cost of this insurance being figured into the rent a tenant pays. Most importantly, a typical lease also says that the landlord waves right of subrogation against the tenant for tenant damage to the building.

This makes sense because logic says that the landlord and not the tenant would be insuring the building. The type

of damage done by our employee is beyond what most tenants' insurance would pay.

As in the case of the Florida sales tax, where I was fortunate to avoid a major loss because my attorney's malpractice insurance came to my rescue, I was saved again. My insurance policy had a provision that covered the tenant for property damage up to \$300,000. Here again, as in the case of the sales tax, I wasn't the smartest businessman in the world, but I must have been one of the luckiest!

I have come to learn how important it is to have a good insurance agent. Mine at the time simply handed me over to his claims department telling me cavalierly..."Bill, I am sorry but this is the type of damage that is covered in the landlord's policy. I don't think you are covered."

It seems to be a knee jerk reaction for all insurance companies to deny claims, so you better have a good aggressive agent who does more than collect premiums!

And the insurance company did deny my claim, then agreed to pay it and then denied it again using some of the most convoluted reasoning you could ever imagine!

I handed the policy over to my attorney, and there, as "clear as day," he read me the clause that said I was covered up to \$300,000. We had to threaten the insurance company with a claim for triple damages to the Florida Insurance Commission before they agreed to pay our claim. It hardly amazed me that when they agreed to pay, the insurance company put in writing that they still believed they were not obligated to pay, but did so only because they had "at first agreed to pay the claim." That was so honorable of them! They would make terrific neighbors!

So here is what I learned. Be sure you have a written lease, of course. And be sure you have waivers of subrogation, because in the absence of such waivers, a tenant could have obligations that go way beyond the typical obligations to keep the leased premises in good condition. And lastly make sure you have an insurance agent who is really on your team in case there is a claim. In my view, that is the most important qualification in choosing an agent. I know one, thing, my new agent is a bulldog. ***