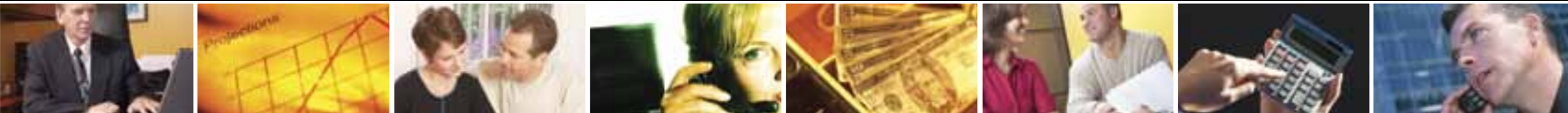


Risk Monitor



When Does Your Insurance Company Have to Defend You in Court?

Commercial general liability insurance pays for lawsuit settlements or court judgments that an organization would otherwise have to pay for certain types of harm others suffer. These include bodily injuries, property damage, advertising injuries, and personal injuries such as violations of privacy. Another benefit of this insurance, however, can be just as valuable or even more so: coverage for the cost of legal defense.

The standard CGL insurance policy gives the insurance company “the right and duty to defend the insured” against any suit seeking damages. Conversely, the company has no duty to defend the insured against a suit seeking damages for an incident the policy does not cover. The company’s duty to defend ends when it has paid out the policy’s maximum limit of insurance for settlements or judgments. Most policies provide coverage for defense costs in addition to the amounts available for payment of damages.

Because the company does not have to defend a claim it believes the policy does not cover, disputes about whether a duty exists can arise between the company and the insured organization. Courts in most states have given the policy a broad interpretation and favored the insured. For example, New York’s highest court has said that “an insurer will be called upon to provide a defense whenever the allegations of the complaint suggest ... a reasonable possibility of coverage.” However, courts have put limits on the duty. A Texas court in 1997 ruled that a court may not “read facts into the pleadings, look outside the pleadings, or imagine factual scenarios that might trigger coverage.” Also, an insurance company’s defense of a claim does not necessarily mean that the policy covers the claim. Another Texas decision in the same year held that the company’s duty to pay for the damages is governed by the facts of the case, not just the possibility of coverage.

Suppose the insured is a construction firm. An employee, frustrated by a particular task, throws a wrench, striking and injuring another contractor’s employee on the job site. The injured employee sues the contractor and the worker. The CGL policy does not cover injuries expected or intended by the insured. If a court decides the employee expected the wrench to injure someone else, the policy will not cover the settlement. However, it is possible that the employee expected or intended no such thing. Because the possibility of coverage exists, the insurance company will have to defend the firm and the employee against the lawsuit.

Now assume the insured is a restaurant. A group has dinner after spending the afternoon tailgating at a football game. One person, already intoxicated from the tailgating, has six beers with dinner and leaves the restaurant very intoxicated. He makes a wrong turn, walks into busy traffic, and suffers serious injuries when a car strikes him. He sues the restaurant for his injuries. The CGL policy does not cover injuries for which the insured is liable by reason of contributing to a person’s intoxication if the insured is in the business of selling alcoholic beverages. Because there appears to be no possibility that the restaurant’s policy will cover this claim, the insurance company has no duty to provide defense.

The cost of defending a lawsuit can often exceed the cost of the settlement. All businesses should discuss their liability coverage with their insurance agents to ensure that they have the protection they need if they get sued. The agent can identify coverage gaps and recommend solutions. They may involve additional premiums; better that a business pays more for insurance than endure bankruptcy due to uncovered legal costs.

Welcome to the Jackson & Jackson Insurance Agents and Brokers Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.



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Get the Injured Worker Back on the Job the Right Way

Workers' compensation premiums represent a major personnel expense for most organizations. Injuries that cause employees to miss work are especially costly, in terms of both lost wage compensation and lost productivity. Also, the longer a worker is disabled and unable to work, the more his future earning power decreases and the more likely it becomes that he will hire an attorney. For these reasons, it is advantageous to both employer and employee to get the injured worker back on the job as soon as possible. As a result, many employers have implemented return to work programs.

Under a return to work program, the injured employee performs a different job while receiving his prior level of pay. The new job should be matched to his current physical capability, reflecting his state of recovery from the injury. To succeed, this requires a good working relationship between the employer and treating physician. The employer needs accurate information as to the tasks the worker can safely perform; otherwise, the result may be a second, more severe injury. If the worker's physician will not cooperate or provide a realistic estimate, the employer or insurance company may have to require a physical examination by an independent physician.

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A return to work program should be one piece of a comprehensive and coordinated loss management program. The elements of the program should include:

- Immediate reporting and investigation of accidents
- Arrangement of primary medical care
- Return to work program
- Regular communications with the injured worker

To assist in the arrangement of primary care, the employer should provide the treating physician with job descriptions that explain each job's physical tasks in detail. Meetings with the physician to explain the nature of the employer's operation will help match a job to the worker's capabilities. Communications between the physician and the employer are vitally important. The employer may want to arrange for direct reports from the physician or regular reports delivered by the employee. The ideal situation is one where the employee can assume light duties without missing any time. Barring that, limiting lost time to a week or two will still keep the claim's cost down, resulting in premium savings for the employer. The experience modification formula,

which adjusts the premium based on loss history, gives the most weight to losses of \$5,000 or less. Getting the injured worker back on the job quickly will help keep the loss well under that limit. Since losses remain in the calculation for three years, the effect of holding down claim costs is long lasting.

Of course, return to work programs have pros and cons. The pros include:

- Limiting or eliminating lost work time
- Keeping the worker involved in the work environment
- Eliminating the need to locate, hire and train a replacement
- Increasing the chances of success should the worker refuse the new duties and sue for lost wage benefits, since the employer can show that it made a reasonable job offer

Among the cons are:



- The employer will pay the employee's full wage for reduced productivity
- An employee with a bad attitude about his alternative duties could lower morale among the other employees
- If the alternative arrangement does not work out, returning the employee to lost wage benefits will wipe out any cost savings

While individual cases might not produce the desired results, employers should realize long-term savings by implementing return to work programs. Beyond the verifiable dollar savings, return to work programs can give the employer a more stable, happier workforce and a good reputation with potential employees.

Review Your Business Interruption Coverage So You Can Stay in Business



Business interruption insurance is like disability insurance for a business. Disability insurance covers some of a person's lost income when she is sick and unable to work. Business interruption insurance covers a business's lost income when a fire, explosion, or some other peril causes it to shut down temporarily. A shutdown after a disaster may have more severe consequences for a business than the damage to the property itself. Therefore, it is vital that business owners know whether they need to update their coverage.

There are two reasons why reviewing business interruption coverage regularly is important:

- Economic conditions can change. When the economy is down, it is likely that a business's sales will either drop or flatten. Continuing expenses, such as utilities, mortgage payments, and payments on other loans, may not necessarily decrease; in fact, some may increase, particularly if there is a spike in energy prices. Conversely, a rapidly growing economy or one with high inflation may quickly drive anticipated sales much higher than what the owners expected when they bought the insurance.
- Regardless of the overall economy, businesses change. They introduce new products or services, expand into new markets, acquire new properties or other businesses, and invest in technologies that increase their productivity. All of these changes affect expected income and may change a business's coverage needs.

When a business owner reviews her business interruption coverage, there are several factors to consider:

- Is the market for the business's services expanding or shrinking? Cell phones, at one time seen as a luxury, over time came to be seen as a virtual necessity; millions of buyers entered the market. This increased sales for retailers and service providers.
- Has the business launched new products or services? In the year 2000, Apple, Inc. was solely a computer manufacturer.

The next year, it introduced the iPod; later in the decade, it introduced the iPhone. These two products now account for a large share of the company's sales.

- If the business has coverage for income from dependent properties, how have those properties changed? For example, the business may depend on one major supplier for parts. If that supplier used to have two warehouses but has closed one of them, a fire that shuts down the remaining warehouse will have a significant impact on the business's income.
- Are competitors entering or leaving the market? A business that has increased competition will be under pressure to resume operations as quickly as possible to discourage customers from permanently going elsewhere. The business will want to pay whatever is necessary to minimize the shut down.
- Has the business's peak season changed? Suppose a company that provides payroll and benefits administration services decides to start offering tax preparation services to its clients. Much of the tax work and its associated revenue occur during the first quarter of the year. A loss that shuts down the business in March will have a much larger impact than it would have before the firm got into the tax business.
- Have building codes changed in the business's location? State and local governments are increasingly adopting "green" building codes that require environmentally-friendly construction materials and practices. Meeting these standards may lengthen the rebuilding period and lead to a longer suspension of business.
- What is happening to the business's costs? If labor or material costs are rising and the business must raise prices to cover the increases, sales volume may decrease and affect the amount of business interruption coverage needed.

Taking the time to review coverage and the firm's financial statements with a professional insurance agent will pay dividends after a loss. Proper business interruption coverage may make the difference between a business re-opening or closing forever after disaster strikes.

continued from page 4...Crime Insurance: A Vital Need in Today's Business Environment

When employees get caught for such crimes, they do jail time, but companies never fully recover the total amount lost. That's where crime insurance comes in. With proper coverage, you can recoup your financial losses.

In addition to crime insurance, it is also recommended to maintain a strong system of checks and balances to ensure unethical employee behavior doesn't pay off. Such controls can

affect your company's insurability and premiums as insurers examine the extent of internal controls, as well as a company's history of fraud losses when determining whether the company is a good risk. With a combination of crime insurance as well as internal control procedures, you will protect your company as well as show dishonest employees that crime doesn't pay.

Crime Insurance: A Vital Need in Today's Business Environment

According to a 2008 study conducted by the Association of Certified Fraud, U.S. businesses lose about 7% of their annual revenues to fraud. This equates to a staggering \$994 billion loss each year nationwide to employee fraud. Even worse, occupational fraud schemes are extremely costly to a company's bottom line, with the median loss in the 2008 study coming in at \$175,000!

The three most common categories of employee scams are: fraudulent statements; asset misappropriation; and bribery or corruption. Two out of five businesses suffer more than five instances of fraud, and one in four loses at least \$1 million as a result of fraud. For these reasons, crime insurance is a wise purchase, extending coverage to you and your business for fraud-related financial losses.

In addition to covering employee fraud, most crime insurance policies also cover third-party scams including forgery, counterfeit currency, and theft of company property. Many policies also cover money losses due to computer fraud by hackers who seek company funds, customer credit card numbers or other financial data.

In fact, as more and more business is done over the Internet, computer coverage and protection against unauthorized funds transfers or computer access are on the rise. Technology has opened the door to make some fraudulent schemes much easier to accomplish. For example, with a simple scanner, it is easy to forge a check, and many fraudulent Web sites attempt to collect personal data from unsuspecting victims.

Not all fraud-related crimes involve money. Some involve company goods that have no apparent value. Keep in mind, there are markets for many unusual items. One insurance company tells of a meat packing plant where an employee was stealing animal fat, and selling it for personal gain.

Although many employees carry out such crimes because they are disgruntled, the most common motivations for employee fraud are greed, vindication against the employer, and financial need. Regardless of motive, you need to be aware of the possibilities, and adequately covered.

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