LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065 Fax: 310-601-7110

www.LawAdvocateGroup.com

Doron F. Eghbali Business Law

How to Look For Businesses Insurance With Prudence and Caution

Saturday, December 10, 2011 by Doron F. Eghbali

Despite the importance of having insurance in today's volatile risky business environment, having insurance does not literally translate into adequate applicable coverage. In other words, the business may be paying for some type of insurance; nonetheless, such coverage may not be needed, sufficient or both. Therefore, the salient inquiry is how to select business insurance reasonably adequate and applicable to the risks the business might be encountering in a foreseeable future. In this article, we explore some of the salient factors businesses should be familiar with when making a decision to select the insurance they really need.

FIRST PARTY OR THIRD PARTY INSURANCE

Fundamentally, there are two types of insurance policies.

A) FIRST PARTY INSURANCE: If the insurance policy only covers the losses incurred by the insured and not by third parties, then by definition, such insurance is first party. In first party insurance policies, the coverage could also extend to losses incurred by business or property by unforeseen events. Examples of first policy insurance include but not limited to: homeowner's insurance covering the residential dwelling and its contents; automobile insurance for uninsured and underinsured motorist; and title insurance.

First-party policies could be either an "All-Risk" policies or "Enumerated" policies. All-Risk policies insure against all losses except expressly excluded under the policy. On the other hand, Enumerated policies ONLY insure against some risks as listed in the policy such as earthquake, flood or wind.

B) THIRD-PARTY INSURANCE: Third-Party insurance covers losses incurred by third parties for which the insured may be liable. The examples of third-party insurance include but not limited to: Commercial General Liability insurance with coverage for personal injury, bodily injury, personal damage, advertising and contractual liability AND Errors and Omission's or Professional Liability insurance.

PRIMARY LEVEL POLICY

Primary Level Policy is the first line of coverage in an insurance policy. Generally, Primary Level Policies contain two distinct duties: 1) Duty to indemnify the insured against losses incurred as a result of assessments and settlements. 2) Duty to defend or reimburse the insured against lawsuits brought by third parties.

It is extremely important to note some primary level policies may not contain the duty to defend.

Furthermore, the insured should be extra careful in how the defense fess are paid. In fact, depending upon the policy, the defense fees could be paid in addition to the policy or could deplete the policy to the extent the defense costs are paid.

UMBRELLA AND EXCESS POLICIES

This might be prudent for businesses to purchase "excess" or Umbrella" policies depending upon if the risks undertaken by the business exceeds the Primary Level Policy.

A) UMBRELLA POLICIES

Generally, Umbrella Policies increase the amount of insurance far beyond the primary level and expand the coverage to encompass occurrences or losses the primary coverage would not cover.

The insured should be careful since Umbrella Policies are triggered, generally, when the Primary level policies exclude or do not cover the occurrence after payment of any deductibles, if applicable.

B) EXCESS POLICIES

Excess policies are used interchangeably with Umbrella Policies, yet Excess Policies are not synonymous with Umbrella policies. Excess policies provide similar coverage as a Primary Level Policy with the exception of providing higher limits after exhaustion of the Primary Level Policy.

The insured should be careful about Excess Policies since they do not have similarly the provisions and coverage as laid out in the Primary Level Policy. This creates a gap in coverage since the Primary Level Policy may include coverage but the Excess Policy may not have such coverage.

OCCURRENCE-BASED POLICIES VS. CLAIMS MADE POLICIES

A) OCCURRENCE - BASED POLICIES

Occurrence-based policies cover injury or losses incurred during the period of coverage even though such injury or loss is reported after the policy is no longer in effect or expired.

Generally, Occurrence-Based Policies require the insured to notify the insurance company of the reporting of such loss or injury "as soon as practicable" or "promptly". If the insured under Occurrence-Based policies fails to properly notify the insurance company of receipt of such loss or injury, under most insurance policies, the insurance MAY deny coverage to the insured.

B) CLAIMS-BASED POLICIES

In contrast to occurrence-based policies, claims-based policies only cover injury or loss incurred during the period of policy. In fact, claims-based policies provide certainty to underwriters as they can build their reserves from the premiums and know they would not be liable for any other occurrences if reported outside the policy period.

Nonetheless, under SOME claims-based policies, the policy does not cover unless the claim has both been made AND reported IN WRITING during the policy period.

ERRORS AND OMISSIONS OR PROFESSIONAL LIABILITY INSURANCE

Errors and Omissions or Professional Liability insurance or Malpractice Insurance, generally, protects the insured against acts, omissions or errors of a professional company or person providing such professional service. Such insurance is available to professions such as lawyers, doctors, engineers or professional companies such as entertainment companies.

Errors and Omissions insurance, usually, covers "all sums" the insured becomes legally liable while rendering the professional services. Nonetheless, Error's and Omissions insurance excludes coverage for dishonest or malicious acts. Such insurance could be both claims-based or occurrence-based. Nonetheless, most Errors and Omissions insurance policies are claims based.

SALIENT CAVEAT

This article NEITHER supplants NOR supplements the breadth or depth of such esoteric topic. In fact, this article only provides a rather rudimentary synopsis of such expansive esoteric subject matter.

DORON EGHBALI *is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More information, Please, Visit: HERE.*