Insurance: Does Your Policy Really Protect You?

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Insurance: Does Your Policy Really Protect You?

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By Leonard D. DuBoff and Christy O. King, © 2009
We wrote the book on small business law.

Often, insurance is purchased with little concern as to the terms of the policy beyond the amount and cost of coverage. Unfortunately, this can lead to the policyholder later discovering a lack of appropriate coverage when a problem arises.

Most insurance policies contain broad grants of coverage and then carve away the protection by exclusions, which should be carefully reviewed. In addition, all policies have a date for the start of coverage and a date of termination.

In a claims-made policy, coverage is available only to an insured if a claim is made during the period of time between the starting and ending dates of the policy. On the other hand, with an events policy, coverage is available only if the event giving rise to the liability occurs within that coverage period.

As an example of these types of policies, let’s say your insurance policy coverage period began January 1, 2008, and ended December 31, 2008, and you had a car accident on June 10 of that year. If a claim is made against you in April 2009 and you have a claims-made policy, it will not cover your June 10, 2008, accident claim; but an events policy would since the event—but not the claim—occurred between January 1, 2008, and December 31, 2008.

Two issues to initially determine, therefore, are (1) what type of policy you have, and (2) if this policy’s protection will continue the protection of earlier policies without resulting in a gap in coverage.

If the older policy was a claims-made policy and the renewal is an events policy, then you should evaluate the likelihood of there being a covered claim asserted which resulted from an event
occurring under the older policy and determine whether it would be prudent to purchase some form of bridge or, as it is called in insurance parlance, tail-end coverage for the potential exposure that may occur during the gap in coverage. In our example, if your 2008 policy is a claims-made policy and your 2009 policy is an events policy, there would be no coverage from either policy for the claim arising out of your auto accident in June 2008.

Another important issue which many insureds do not pay attention to until a problem arises is the selection of an attorney. Some policies allow the insured to select the attorney, while others reserve that right to the insurance company. If it is important to you to work with your own attorney and to have your lawyer handle your case, you should determine whether your policy permits this.

Note that whereas the law states that an attorney employed by the insurance company represents the insured client and, ethically, that attorney should look only to the interests of the client, economic reality often overshadows the relationship. If there is a conflict between the rights of the insured and those of the insurance company paying the bill, which way do you think the attorney hired by the insurance company will typically lean?

Because of this, some jurisdictions require insurance companies to either take full responsibility for a claim or to hire a second lawyer for the sole purpose of looking out for the insured party in connection with the case, while the insurance company’s hired attorney is paid to handle the underlying case.

Often the insurance policy requires any dispute between the insurance company and the insured to be arbitrated. This benefits the insurance company since jurors will likely favor the insured when the dispute is with that person’s insurance company.

Several states have statutes making it clear that if such a dispute does arise and the insured party prevails, then the insurance company must pay the underlying liability, as well as the insured’s attorney fees. If, on the other hand, the insurance company prevails, the insurance company is not entitled to recover its attorney fees. This one-way protection is intended to be a deterrent against insurance companies taking unreasonable positions when dealing with their own insureds.

If the insurance company denies coverage, then the insured party should determine whether the denial is appropriate. In a number of cases handled by our office, a lawsuit was filed against the insurance company alleging that the denial was in bad faith. Courts frequently agree with the insured and impose liability on the insurance company for bad faith denial.

Individuals are often advised by their insurance professionals to purchase umbrella insurance policies for additional protection. Frequently, those who buy umbrella policies are doing so because they feel that they may have exposure in connection with their business or professional activities. If this is the case, they should obtain a different type of insurance coverage—the
general business liability policy—since umbrella policies typically exclude coverage for business or professional activities.

Customarily, claims for copyright infringement, patent infringement, and other forms of intellectual property infringement are also exempt from coverage. Thus, if you are engaged in the business of producing work for the media, then it is likely that you need to obtain an additional form of coverage.

It would certainly be appropriate for you to ask your insurance professional to explain all of the options available and the scope of coverage for each so that you can purchase a policy that meets your needs.

The insurance laws in most jurisdictions make it clear that insurance brokers are agents of the person being insured for all purposes except the collection of premiums. This means that representations by your insurance broker may not bind the insurance company that issues your policy. Nevertheless, most brokers themselves have errors-and-omissions insurance, which will likely be available if the broker misstates or misrepresents the scope of the insurance coverage purchased.

An insurance broker is an individual who is authorized to sell insurance for a number of different insurance companies. This person should be distinguished from an insurance agent who is employed by a single insurance company and is permitted to only write insurance for that company. Insurance agents are able to bind the company that they represent, and thus their statements will generally protect you with respect to that company’s insurance policy.

One potential problem to be aware of is the fact that there may be a difference of opinion between you and your insurance broker or agent as to what was represented when a policy was acquired. For this reason, it is a good idea to request a written explanation as to the scope of coverage and the types of benefits available. In this way, you will have written evidence of exactly what was said and what you understood when the policy was first acquired.

It is clear that insurance should be purchased to protect you from the risks to which you are exposed in both your personal and business activities. The extent of coverage and amount of insurance to be purchased are important considerations, but as you can see, there are many other issues to discuss with your insurance professional. You may also want to consider having your insurance policy reviewed by a knowledgeable attorney to ensure that you have the coverage you desire.

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on January 29, 2014 at 11:10 PM said:

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wiadomosci

on January 30, 2014 at 7:10 AM said:

A person essentially help to build much content I would state. That is the very first time I frequented your web site document and as much as now? I amazed with the analysis you made to create this real write-up extraordinary. Excellent task!

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on January 30, 2014 at 11:33 AM said:

it is usually great to determine these details in your post, i was searching precisely the exact same but clearly there was hardly any correct resource, thanx now i’ve the connection that we wanted my research.

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on January 30, 2014 at 1:57 PM said:

I do enjoy visiting your website, you usually make me amaze with great articles.

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One extra system in favor of promotion your internet site is posting comments on various
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on February 1, 2014 at 2:18 AM said:

I am usually browsing online for articles that may benefit me. Thx!

evangelical formosan church los angeles
on February 4, 2014 at 10:10 AM said:

Write more, thats all I have to say. Literally, it seems as though you relied on the video to make your point.

You obviously know what you're talking about, why throw away your intelligence on just posting videos to your weblog when you could be giving us something enlightening to read?

on February 5, 2014 at 10:05 AM said:

These are in fact impressive ideas in concerning blogging. You have touched some nice factors here.
Any way keep up writting.

christian ministry north korea
on February 5, 2014 at 10:17 AM said:

Hello, I check your blog daily. Your story-telling style is awesome, keep it up!
christian church union city ca  
on February 5, 2014 at 12:17 PM said:

Good response in return of this difficulty with solid arguments and describing the whole thing concerning that.

christian ministry watchdog  
on February 5, 2014 at 12:18 PM said:

That is very fascinating, You are an overly skilled blogger.

I’ve joined your feed and sit up for in the hunt for extra of your excellent post. Also, I have shared your web site in my social networks.

brisbane.2600.org.au  
on February 5, 2014 at 12:37 PM said:

Hello, constantly i used to check weblog posts here in the early hours in the dawn, for the reason that i love to learn more and more.

Lazaro  
on February 5, 2014 at 3:32 PM said:

This is a topic that is close to my heart… Many thanks! Where are your contact details though?

pastor uwe brand  
on February 5, 2014 at 7:31 PM said:
certainly like your web site however you have to take a look at the spelling on several of your posts.

Many of them are rife with spelling problems and I inn finding it very bothersome to inform the reality on the other hand I’ll certainly come back again.

cocker spaniel grooming
on February 6, 2014 at 4:57 AM said:

Peculiar article, just what I was looking for.

saint peter will call my name
on February 6, 2014 at 7:30 AM said:

Does your site have a contact page? I’m having problems locating it but, I’d like to send you an e-mail. I’ve got some ideas for your blog you might be interested in hearing. Either way, great website and I look forward to seeing it improve over time.

christian church hutchinson ks
on February 6, 2014 at 8:19 AM said:

Thanks very nice blog!