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Client Memorandum

Discussing Issues of Interest to our Clients

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INSURANCE ISSUES FOR BUSINESS OWNERS

By Darryl J. Horowitz

In a previous issue of *Legal Brief*, I discussed protecting yourself with adequate auto insurance. This is, perhaps, the insurance that is most commonly bought, because every driver is required to be covered by automobile liability insurance. But what about business owners? Should they buy insurance as well?

This article discusses what insurance business owners should be aware of and how the insurance may protect them.

Insurance to Consider

The insurance available on the market today is as varied as the risks it is designed to protect. The most common insurance that business owners purchase is workers compensation insurance; California law requires every employer (except the State) to purchase workers compensation insurance or file a certificate of consent to self-insurance. Such insurance will not be discussed in this article. Equally important is general liability insurance. Other insurance available to the business owner includes disability insurance, key person insurance, and a personal liability insurance policy, also known as an umbrella policy.

General Liability Insurance

Perhaps the most commonly purchased insurance is the general liability policy. Like many property and casualty insurance policies, it provides two primary benefits, namely: (1) a defense to claims brought by third parties against the business owner for acts or omissions that are covered by the insurance policy; and (2) payment to the third party for any judgment or award

rendered against the business owner in the event the business owner is found liable to a third party for any act or omission that is covered under the insurance policy. It is designed to protect the business owner against acts or omissions caused by the business owner that injure third parties; it is not designed to protect the business owner against injuries to himself or herself.

For example, if a customer enters your business establishment and slips in the entryway, then your general liability policy will compensate the injured party for any injuries sustained as a result of any negligence on your part.

Many general liability policies will also compensate the business owners for losses caused by the acts of third parties. For example, many general liability policies provide for reimbursement to the business owner for theft of property from the business establishment.

Not all risks, however, are covered by a general liability policy. The exceptions to coverage are generally included under the section entitled "Exclusions." Such exclusions include but are not limited to:

1. Any breach of a written or oral agreement;
2. Any breach of an express or implied warranty;
3. Trademark infringement;
4. Violations of Business and Professions Code Section 17200 and unfair competition;

5. The sudden and accidental release of any hazardous substances, including petroleum products, or pesticides that damage either the business owner's or a third party's property;
6. The intentional acts of the business owner, including an assault and battery caused by a business owner or the employee of a business owner.

Recommendations for the Purchase of General Liability Insurance

Before purchasing general liability insurance, it is important to thoroughly discuss your particular needs with your insurance professional to ensure that the policy you buy will cover the risks you may face in the future. In many instances, certain acts or omissions that would normally be excluded could be covered by the purchase of a rider on your policy, available at an additional cost.

Disability Insurance

Disability insurance protects the business owner from risk of any disabling injury. Most policies provide that if the owner of the policy is prevented from working in the business due to some disability, injury, or mental illness, the disability policy will pay the insured a monthly amount for the duration of the disability, unless a shorter time is set forth in the policy. There is normally a waiting period of between 30 and 90 days.

Most disability policies will not pay your entire salary. This is an incentive to the insured to get back to work and receive the full salary.

While the State of California will provide payment to disabled workers, the State payments you can expect to receive will generally be insufficient to support you, much less your family. For that reason, disability insurance is often recommended.

Reasonably priced disability insurance policies are available through many trade and professional organizations. Check with your insurance professional to get the best price

available. We also recommend that you take steps to make sure that all potential disabilities that may befall you are covered. Many policies provide for a broad definition of what constitutes a disability, and we recommend that you speak with your insurance professional regarding the definition of disability. In any policy that you purchase, make sure you have the best coverage available.

Key Employee Insurance

Key employee insurance is generally a life insurance policy placed on key personnel of the company who are most important to it. The life insurance proceeds will be used either to purchase the interest of a deceased key employee, pursuant to the terms of a "buy-sell" agreement, or will be paid to the company to allow it to survive on the death of a key employee to the company.

Many small corporations have specific agreements, known as buy-sell agreements, which specify that on the death of one of the shareholders, the corporation has the right to purchase the interest of the deceased shareholder from the shareholder's family at a predetermined price. Key employee insurance is then purchased in an amount equivalent to the predetermined purchase price so that upon death of a shareholder, the insurance proceeds will be paid to the corporation, and the corporation will then pay the estate of the deceased shareholder for the interest in the company, effectively buying back the stock.

We recommend that you evaluate the effect the loss of the key employee would have on your company, i.e., will the company survive the death of the key employee. Also, it is important to determine how much key employee insurance should be purchased. After all, you do not want to pay for insurance you do not need.

Umbrella Insurance

An umbrella insurance policy provides an extra layer of insurance over that provided by your own general liability insurance, homeowners (or renters) insurance policy, or your automobile liability insurance policy. Each of your insurance policies will have specific limits of insurance, which is the maximum amount the insurance company is required to pay in the event of a covered loss. For example, if a third party is injured on your property in an accident, the

general liability policy may pay up to \$1,000,000.00 to the injured party assuming, of course, that the injury is caused by your negligence, or that of your employee. In many instances, however, your potential liability may be in excess of the policy limits of your general liability or other insurance policies. Therefore, many business owners buy an additional layer of insurance by purchasing an umbrella policy. These can be purchased for various amounts, depending on your particular needs. However, the umbrella policy is only required to pay if the limits of the underlying insurance (e.g., general liability, homeowners, automobile liability, etc.) are not sufficient.

Conclusion

There are many choices available to the business owner for insurance. Not only are there many insurers that provide policies at various prices, there are also various coverages that are available within each policy. We therefore recommend that before purchasing any insurance, you hire a competent insurance professional to guide you through the maze of policies and premiums that are available.

Be a smart consumer. Have your insurance professional shop around not only for the best insurance policy, but also the most favorable premium. Make sure that you have coverage for all of the potential risks you may face and, most importantly, read your insurance policy once you purchase it. You may find that you do not have the protection that you think you have. If you read your policy and find that you do not have the coverage you thought you did, then contact your insurance professional to get the coverage that you need.

This article was prepared by Darryl J. Horowitz, a litigation partner at Coleman & Horowitz, LLP, emphasizing business, construction, real estate, environmental and personal injury litigation, commercial collections, casualty insurance and professional liability defense, insurance coverage, and alternative dispute resolution. He is a member of the Fresno County Bar Association, the American Bar Association, the Association of Business Trial Lawyers, and the Consumer Attorneys of California. If you have any questions regarding the subject of this article, please contact Mr. Horowitz at (559) 248-4820/(800) 891-8362, or by e-mail at "dhorowitz@ch-law.com."

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