

LIABILITY INSURANCE: What is it and Do I Have Enough of it?

By David M. Governo, J.D.

If you think taking care of your company's insurance needs means merely contacting your local insurance agent, purchasing a commercial general liability policy package and feeling confident that you have properly safeguarded your company, you may be in for a surprise. In this extraordinarily litigious society where people tend to sue for just about any type of accident, buying a run-of-the-mill insurance policy and hoping for the best is not an effective way to protect your business. Nevertheless, the head-in-the-sand approach is common practice for many, including those in the cleaning and restoration industry. One factor that perpetuates this problem is a fundamental lack of education about insurance and the various options available in today's marketplace. Insurance is complex and cannot be addressed thoroughly in just a few pages. With that said, this article will provide an explanation of some fundamental insurance intricacies and issues to consider before purchasing or renewing insurance.

Know Your Rights

The concept that a person buying insurance has rights is foreign to most. Anyone who has attempted to read an insurance policy without some formal training is at a disadvantage, and thus, insurance agents are able to sell policies that give them (and their insurance companies) an advantage. This translates into high premiums with low potential for paying claims. However, buying an insurance policy, in many respects, is no different than buying a car. People know that when they buy a car, they can negotiate with the salesperson to give them the most for their money, whether it be the value of the trade-in on their current vehicle or the "bells and whistles" that they wish to have in their new car. An insurance policy is no different. It is, in fact, a legal contract that can be negotiated with "bells and whistles" that provide greater coverage to the policyholder than a standard liability policy.

Unfortunately, most people simply negotiate the policy coverage limits, which is the maximum amount that an insurance company could ever pay on a claim. Then they bask in the false security of their \$1 million or \$5 million insurance policy, figuring that they have so much coverage that anything and everything will be taken care of by this top-notch insurance. What most people completely ignore is the underlying concept that insurers are exceedingly particular about the types of lawsuits they will *actually* pay for. It serves no real purpose to have \$1 million of insurance that does not oper-

ate to protect you from the real risks your company faces. Sophisticated insurance buyers, on the other hand, will question the applicability of standard forms to their particular business and negotiate exclusions, riders, endorsements, terms and conditions.

Different Policy Types

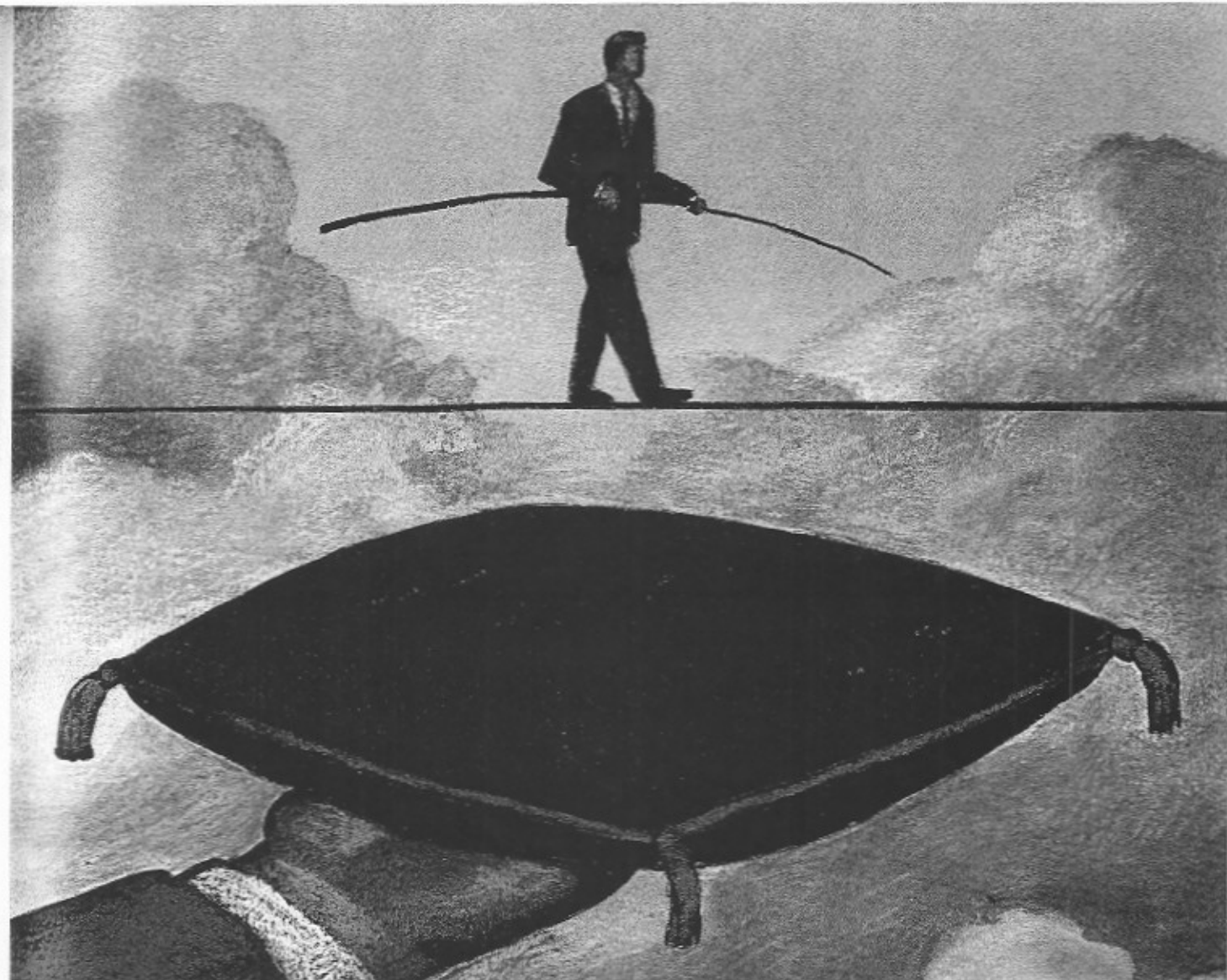
Foremost in determining what type of insurance coverage your company needs is an understanding of the difference between "first-party" and "third-party" insurance. First party insurance covers loss, injury or damage suffered directly by the policyholder. Businesses need first-party policies to protect their vehicles, property and, perhaps, employees. Suffice it to say that even the scope of first-party coverage, which tends to be taken for granted, should be carefully analyzed. The focus of this article is third-party policies, which cover loss, injury or damage suffered by persons or entities other than the policyholder.

A second important concept that business owners should understand is the difference between an occurrence-based policy and a claims-made policy. An occurrence-based policy will only cover losses (known as "occurrences" in insurance parlance) that took place within the policy period. A claims-made policy will cover a loss that occurs at any time as long as the claim is brought during the policy period.

An example will help explain the importance of this distinction. If you performed a job in 1999 and, at the time, had a claims-made policy but switched to an occurrence-based policy in 2000, you may not have coverage if that client sues you in 2000 for a loss that occurred in 1999, even though you clearly had insurance policies in effect during the entire time period at issue. This is due to the fact that once you cancel the claims-made policy, it ceases to cover anything, and your current occurrence-based policy will not cover acts that occurred before the policy took effect. This is one of the many items you should be aware of any time you anticipate changing your insurance coverage.

What's Covered Under My CGL?

The third-party policy many mistakenly believe to be the panacea for all business insurance needs is the commercial general liability policy ("CGL"). Known prior to 1985 as comprehensive general liability policies, CGLs are designed to protect the policyholder from having to pay for damages or losses incurred by third



parties arising from the policyholder's business operations. Generally, CGL policies cover four types of injuries: (1) bodily injury that results in actual physical damage or loss; (2) personal injury; (3) property damage; and (4) advertising injury.

The first component of CGL coverage is for "bodily injury" to any non-employee, third party. It is only for physical injuries and does not include claims for emotional or mental damage. On the other hand, the personal injury component of the coverage is broader and provides coverage for other intangible injuries, such as damage to reputation. The third component of a standard CGL policy is coverage for property damage, which is usually defined as physical injury to tangible property. Finally, advertising injury coverage protects companies from charges of negligence that result from the promotion of its own goods or services.

What Isn't Covered Under My CGL?

There is no coverage under CGL policies for obligations an insured would have under workers compensation, disability benefits, unemployment compensation or other similar laws. There are other specialized policies for those types of claims. For instance, CGL policies do not cover bodily injury to employees suffered in

the course of their employment because most states require employers to have separate workers' compensation insurance. Other employee-related issues such as discrimination or wrongful termination claims typically require Employment Practices Liability Insurance, which is a separate coverage policy.

Additionally, CGL policies will contain exclusions which result in gaps of coverage for potential lawsuits your company could face. These exclusions can be for automobiles, watercraft, war and other activities giving rise to injury, including one of the most heavily litigated exclusions, the so-called "pollution exclusion." Individual policies must be closely scrutinized to determine what is being excluded and what is being included if a policyholder has any chance of obtaining the full coverage needed for real peace of mind.

Your Duties as an Insured

There are a number of duties commonly imposed on the policyholder which, if not taken seriously, can ultimately result in the insurance company denying coverage of your claim. First, the policyholder has a duty to promptly notify the insurer that a claim exists and request that the insurer defend it. Questions often arise about whether and when to report a potential claim, particularly

given the concern that insurers will drop coverage or refuse to renew policies for companies which make multiple claims. Make these decisions with a complete understanding of the implications of the choices available. Once a claim has been made, the insured is required to cooperate with the insurer. Despite the fact that cooperation may entail hours of your time, failure to do so may give the insurance carrier rightful grounds to deny coverage. Finally, an insured is prohibited from resolving a matter without the insurer's permission. Do not discuss claims with anyone other than your insurance agent or attorney.

Where to Go From Here

Insurance can give you piece of mind as long as you follow a few pieces of advice. First, maintain continuous communication with your insurance agent. Your insurance agent should be just as important to your business planning as your lawyer and your accountant. Be sure your agent is well qualified and knowledgeable. By explaining your business and all of the specific factors and potential issues you may face, a qualified insurance agent can tailor a coverage program that will meet your needs. It is your responsibility to make sure that your insurance agent understands what it is you do. If you do not provide him or her with all of the details that make your business unique, you may have nobody to blame but yourself if you end up with a loss for which there is no insur-

ance. After all, you are the expert when it comes to your business. Do not expect an insurance agent to read between the lines to determine what potential liability you may face.

Second, each year when your policies come up for renewal, avoid just sending in your premium and hoping your coverage is enough. You should review your coverage annually. Any time you change, expand, reduce or in any way alter your business, immediately schedule an appointment with your agent to make sure that what you are doing now conforms with the coverage you previously negotiated. If you started your business as a one-person operation doing residential cleaning and now have expanded to include employees and commercial clients, chances are that the policy you put in place when you opened your doors is no longer adequate. Insurance can provide peace of mind, but only if you have done your part to work with your agent to determine the proper coverage.

Insurance can provide an important piece of your business planning package, but it requires some knowledge and attention. Question your insurance agent and attorney about your options. Explore your risk management choices and be confident that you have put the best plan into place. ■

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