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Common Insurance Coverage Limitations

There is no greater joy for a business owner, is there not, than to have a serious loss or claim come in, only to find out that there is no insurance coverage. If this has not happened to you, it's on the way. The way insurance companies do business has changed considerably over the last 15 years or so, as exclusion is stacked upon exclusion from coverage. Underwriters recognize trends and new but not uncommon types of claims, claims which can run up significant dollars, and simply exclude them from coverage. Lead paint exposures and mold are good recent examples. Probably ten years ago I had a case where my client had a fire insurance claim. As we read through the policy and the minutia of exclusions, we discovered that the fire insurance did not cover losses occurring because of a fire. I'm not kidding. In the subsequent court battle, the Supreme Court Justice ruled that he didn't care what the exclusions said; my client had purchased fire insurance and, as far as the court was concerned, there was coverage. The fire insurance company declined to appeal, probably because they did not want a bad precedent. Last month, I had a client, a construction contractor, who had a collapse on the job. His commercial liability policy specifically covered collapses among other mishaps common to the construction industry. However, reading the fine print of the exclusions, we found that the collapse coverage did not cover collapses. Again, I'm not just being facetious here. This is what is out there in the real world. As a business owner, you need to know how to protect yourself.

First and foremost, you have to know the ins and outs of your policy. Many business owners go to an agent and are told that they are purchasing a comprehensive business owner's policy that should cover their needs, and then put their full trust and confidence in the belief that they are now fully protected. Does your insurance agent work for multiple lines rather than

one insurance company? Agents who work with multiple lines of insurance are probably better suited to search for the best coverage situations (as well as possibly the best price). Most commercial liability policies start with general broad coverage, but then list multiple exclusions as well as definitions of terms which substantially limit the coverage. Understanding and cross-referencing all these definitions and exclusions, which bounce back and forth through the policy, can take hours even for a trained legal mind. Oftentimes the wording is very vague, perhaps deliberately so. When you put in a claim and get a denial letter from your insurance company, it will typically recite paragraph after paragraph of exclusions which are in broad or vague terms sounding like there is no coverage, but you really have to read more deeply into the policy. There may be policy language more specific to the facts of the loss. Another possibility is that you could receive a "reservation of rights" letter from your insurance company. They will still agree to defend you in any lawsuit brought based upon the claim but reserve the right to later deny coverage depending on how the particular claim comes in or what facts are elicited through the litigation.

Exclusions that you could expect to see in a policy include exclusions for any bodily injury or property damage which you assume under any contract; exclusions for property damage because of faulty workmanship done by you; exclusion for asbestos, mold, lead paint claims of any kind; exclusions for any kind of defective material or methods used by you that causes damage or loss (isn't that what you're buying insurance for?). Coverage may not be applicable if there were supposed to be protective safeguards that were not in working condition. Contamination claims are typically not covered. Also, insurance companies typically do not cover for pollutants of any kind including their escape or spills. The definition of a "flood" (which is almost always not covered) can be worded

in the policy to prevent all sorts of water loss claims, which you would not typically perceive as a flood. Some out of state policies are denying coverage for New York Labor Law claims, being the type of claim where, as an owner, you are most likely to get sued.

Tell me if you can understand this coverage exclusion: "We do not pay for property damage to work performed by you if the damage is caused by the work or part of the work including property damage arising out of your work and we do not pay for property damage for property that has not been physically injured or destroyed."

An insurance policy is a contract and as with most contracts when you are in business, you really need to have your attorney review it carefully and give you some guidance on it before you enter into it. If you have a claim, a little time spent with your attorney before submitting it or giving statements may prove worthwhile.

Assuming coverage, you still have to avoid the common pitfall of not notifying your insurance company in a timely manner. Any event or occurrence with potential for a claim or potential for you to get sued (someone slips on your property but says they're okay), anything, should be reported to your insurance company. Typically your premiums will not go up unless a claim is actually made. Do not wait until you are sued to report situations to your insurance company. If you have a claim such as for property damage or other loss, you must notify your insurance company "as soon as practicable" which means right away, unless you want to get into a battle with your insurance company about not giving them timely notice.

Understanding your policy, its limits, exclusions, and whether additional coverages need be pursued can prevent some very unwelcome surprises down the road.