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ENSURING YOUR BUSINESS HAS INSURANCE WHEN
YOU NEED IT

BY JACK GARSON

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Just in the last few years, there's been Hurricane Sandy thundering up the East Coast and causing more than \$8 billion in damage to businesses just in New Jersey alone. On the other coast in California, the drought this year has racked up more than \$2 billion in losses and cost thousands of job. Factor in record floods and tornadoes, and the threats aren't just to your life and safety, but to your company's survival as well. With each disaster, countless businesses suffer damage, only to discover too late that their existing insurance fails to provide necessary coverage.

A variety of other threats can pose risks to your company. You may face anything from injuries to your workers and customers, to fire that destroys your facilities, to lawsuits accusing you and your colleagues of failing to uphold duties to shareholders, clients, and employees.

So when you buy insurance, you shouldn't be simply checking a box. You are investing in a life raft. When you hit an iceberg, you don't want to find out the boat leaks or isn't big enough for all the passengers.

The Basics

Start with the basics: There are many types of insurance to address the risks that could threaten your business, but they often fall into three categories:

Injuries and death: First, there is insurance for injuries or death for those affected by the operation of your business. This category of insurance includes commercial general liability insurance, workers' compensation insurance, and product liability insurance.

Damage to property: Second, there is insurance for damage to property. This insurance also comes in many forms. For years, the most common form of this insurance was referred to as "all risk" or casualty insurance. More recently, this been referred to as "special causes of loss" insurance.

Executive protection: Third, there is insurance that protects company officers, executives, and directors for their roles and duties with your company. For example, directors' and officers' liability insurance ("D&O" insurance) provides protection if a company's shareholders allege wrongdoing by your business' senior managers. As our society has grown more litigious, insurance companies have created new types of insurance. You might procure fiduciary liability insurance to protect against employee claims of mismanagement of your business' 401(k) plan. Or you might buy employer's liability insurance for protection against employee allegations of sexual harassment or discrimination.

Of course, any individual business may face the need for special types of insurance. But, most importantly, you need to make sure you understand how your insurance will work and whether it provides the protection you need when you need it the most.

The Pitfalls

There are countless pitfalls you face when purchasing insurance:

Not enough insurance: Some businesses find out all too late that they don't have enough insurance to cover their losses. For example, you might think that you have enough insurance to replace your building that recently burned down. Then you discover that newly enacted laws require that you reconstruct your building with more advanced fire or flood protection systems or expensive energy-saving materials, but your insurance does not cover the cost of these required enhancements.

The wrong insurance: In other instances, you haven't bought the insurance you need. Some companies are the victims of embezzlement. Unfortunately, they discover that their insurance could, but does not, cover employee theft. The culprit may go to jail, but your stolen money is long gone.

Bad insurance: In rare, but not unheard of, cases, businesses fall prey to outright insurance scams. In one case, we talked a client out of participating in a health insurance "pool" that promised low rates by grouping businesses together to create a fund that would pay employee insurance claims. The premiums were suspiciously low, the explanations didn't make sense and the paperwork was virtually nonexistent. Only later did our client discover that it had dodged a bullet because the arrangement was similar to a Ponzi scheme and the managers had walked off with most of the money they had collected.

Additional Considerations

Even if you do buy all the right insurance, you can still encounter significant problems. For example, a construction contractor might procure the appropriate property and liability insurance. Still, all of this protection does not provide for the replacement of defective work by subcontractors. Instead, the contractor must require its subcontractors to provide performance and payment bonds. These bonds

require a deep-pocketed third party, a surety, to guarantee that faulty or incomplete work will be fixed or finished and paid for by the surety.

Similarly, you can have all the insurance in the world but still not have taken the precautions to prove your claim. Consider the business that insures its inventory but keeps all the records of that inventory at the same site. A fire that destroys the inventory might also burn up the records necessary to maximize recovery of insurance proceeds. You need to determine not only what insurance you need but also plan on how you will prove your claim.

You may need an experienced advocate to collect on your insurance claim. In the lifespan of your business, you will rarely sustain a major insured loss. However, insurance companies fend off claims on a daily basis. When you are up against an experienced insurance company, it is sometimes necessary to have a veteran advocate on your side, too. Consider hiring an experienced advisor to argue your case. They often work for a percentage of what they recover, and quite often, the best ones pay for their efforts many times over by significantly increasing your recovery.

Whatever you do, don't buy your insurance because the insurance company has a cute mascot or the process is quick or the insurance is cheap. In fact, all of these attributes can be dangerous distractions. They don't get to the heart of why you are buying insurance: ensuring you have protection when you need it. When that next tremor or storm hits, you should have the comfort of knowing you have the right protection.

Life presents risks. With the right insurance plan, they can be hassles instead of business killers.

Jack Garson is the author of *How To Build a Business and Sell It for Millions* (St. Martin's Press) and writes a business law column called *The Legal Edge* for *SmartCEO Magazine*. As founder of the law firm Garson Law LLC, he leads the business and real estate practice groups. Jack serves as a legal advisor for numerous local, regional and national companies, focusing on business transactions, commercial real estate and construction law. In addition to providing legal counsel, he services as a strategic advisor and negotiator for many clients, providing guidance on issues such as the growth and sale of businesses, liability and risk reduction, the hiring and retention of key personnel, and protecting and enhancing profitability, as well as negotiating the resolution of complex commercial disputes. Jack has been selected to be included in *The Best Lawyers of America* and he has repeatedly received the Super Lawyer designation. He has been recognized as a DC region Legal Elite and has received a Martindale-Hubbell Peer Review Rating of "AV" since 1995, representing the highest possible ratings for legal ability and ethical standards.

Jack Garson
Garson Law LLC
(301) 280-2700
jgarson@garsonlaw.com

