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Wrong assumptions about assumed liability - Seek professional advice before signing any contract

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Whether you lease space for your office, sell product to customers who utilize purchase orders, or provide services to others under contract, you will have contractually assumed some liability of the other party. These contracts form a basis for doing business today, but if you, your attorney, and your insurance agent have not carefully reviewed them you may well have agreed to be responsible for damages, fees, expenses, costs, etc., that are not going to be insured.

It is eminently reasonable that you should be responsible for damage and injury that you or your employees cause someone else. If you are occupying or conducting operations at the premises of another it is also reasonable that, by your causing that damage or injury, you should also be responsible for the liability of the owner of the premises if he is sued in conjunction with that damage or injury.

Your general liability (GL) insurance promises to pay on your behalf your tort liability for injury or damage that you cause. But when you agree in a contract to also be responsible for the liability of others arising out of your actions, that extends beyond your tort liability. This additional liability can be insured under your GL cover by adding Contractual Liability. Most GL policies automatically provide this extended coverage today, but it is imperative that you compare the contract at hand to the definition of "insured contract" within your policy to determine whether and to what extent your policy will cover the liability that you have assumed. If it will, then your GL will insure the additional third party tort liability you have assumed, but the contract probably also requires you to be responsible for all costs and expenses of the indemnitee, and some of these costs may not be covered.

When you are faced with the prospect of signing any contract, however routine, you need to carefully read and understand the ramifications of the indemnification section and the insurance requirements section. This means, at minimum, you should provide a copy of those sections to your insurance agent, and also probably your attorney, to make sure that what you are agreeing to is actually going to be backed up by your insurer.

As a lessee, you have a GL policy and your insurer and agent know that you are occupying someone else's premises. The lease makes you responsible for damage done to the premises for which you are responsible, but without Fire Damage Liability (formerly fire legal liability) to cover that damage, your policy may not respond, and if your policy provides only the basic $50,000 limit it probably won't be enough.

Or as a contractor, you agree to be responsible for liability arising out of your work, both while you are performing it and after you have completed it, and the insurance requirements call for the property owner to be an additional insured. The typical GL policy will cover both of you during the time while you are performing the work but the additional insured coverage may well drop off as

soon as the job is completed, leaving you alone in your indemnification of the owner.

Today's contracts usually contain very robust indemnification clauses and insurance requirements, and it is typical that the requirements exceed the policy provisions. By signing that contract without first either amending your policy or negotiating changes in the contract, you could automatically be in breach of the agreement.

In summary, unless you are an attorney and a qualified insurance agent, you should seek professional advice before signing any contract, and while most agents aren't attorneys, most attorneys are also not insurance experts, so both should be consulted.

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