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Business Liability Insurance: Intro. to Causes of Action - by Michael Brangwynne

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This is the third article in a series on the circumstances that attach to a civil lawsuit. Earlier articles in the series can be found on Fletcher Tilton's website under Articles and on the NEREJ website.

In order to lay a proper foundation, it seems necessary to take one final detour before diving into the most common causes of action. As we saw in the second installment of this series, based on the principal of respondeat superior, an employee's single careless act can have dramatic consequences on his employer's business. By incorporating, business owners usually can protect their personal assets from exposure to liability. Nevertheless, the assets of the business—which can be substantial—are still exposed to liability.

To avoid the risk that an employee's actions might bankrupt the business, most business owners will invest in business liability insurance, which insures the business against liability up to a certain amount for a variety of claims that might be asserted. If a lawsuit is filed against the business for a claim that is covered by the policy, then the insurance company will retain legal counsel to defend the business. If necessary, the insurance company will pay to settle the claim, or pay a judgment entered against the business—up to the policy limits.

Business liability insurance is a critical tool in protecting business assets, but it is not foolproof. There are of course limitations on the amount of liability insured, with the level of protection naturally affecting the cost of premiums. Furthermore, as we will see, there are many different causes of action, and all claims will not necessarily be covered. It is important for business owners to understand the coverage provided by their insurance policy. A commercial general liability policy will typically insure against claims by third parties for bodily injury and property damage caused by the employees of the business. Nevertheless, almost every policy of liability insurance will have exclusions—claims for which the insurance company does not provide coverage. For example, any loss or damage to a third party that is caused deliberately by an employee (rather than just carelessly) will likely be excluded from coverage under a general liability policy. For this and other

reasons, claims of employment discrimination practices may not be covered. Furthermore, certain types of damages claims—such as a claim for psychological injuries like mental anguish and emotional distress—may not be covered under a general liability policy.

Indeed, if you or your business is the subject of a claim and your insurer issues a “Reservation of Rights” letter, your insurer is notifying you that it may deny coverage on some or all of the claims that have been asserted. My colleague, attorney Adam Ponte, has written in more detail on the conflicts that can arise under such a situation, and his article can be found on Fletcher Tilton’s website.

Conclusion

Prudent business owners can take appropriate action to protect both their personal and business assets from exposure to liability. Not only is it crucial to incorporate, but it is also crucial to obtain and understand appropriate business liability insurance. With these protections in place, the next step is to avoid engaging in conduct that might give rise to liability in the first place. In the next installment, we will begin to explore specific causes of action, and the types of actionable conduct that we should strive to avoid.

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