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10/22/2022

Current Events and the Impact Upon Insurance

9:00AM -12:00PM

Richard G. Clarke

CEUs: 3

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What's in the News?

Important to Emphasize

- How news impacts (and demands) insurance coverage;
- Major exposures NOT COVERED insured's individual policies;
- Coverages available at additional premium ("relationship currency");
- Ability by agent to access coverage, generally (direct markets E+S markets and MGAs);
- Leverage by the agent to obtain coverage(s) necessary ("production currency"). May be premium volume, special arrangements, etc.);
- Agent as a source of education and information on insurance;
- Agent as a committed communicator ("relationship currency").

Constant Developments Impact Insurance

- Legislation (Affordable Care Act);
- Social Developments (Social Engineering Fraud);
- Societal Trends (“Political Correctness”);
- Regulators and Court Verdicts (Website Content Accessibility Guidelines - WCAG);
- Catastrophes (Natural Disasters – Forest Fires);
- Major accidents/human error (Duck boats);
- Litigation (Surfside Condos – Sandy Hook Suits).

Affordable Care Act

- Employers with 50+ Employees
Must be in Compliance – Rigorous.
Individual Mandate Eliminated 2017.
Endorsement to Fiduciary Liability
insurance;
- Guidelines for Group Health
Insurance:
 - Fines and Penalties for non-Compliance;
 - Main Regulator is IRS;
 - Rigid – talk of “Single Payer System”;
 - Solution: Fiduciary Liability Insurance
With "ACA Fines/Penalties Endorsement"

Fair Labor Standards Act ("Wage and Hour")

- Easy for employers to be accused of violation (iPhones, iPads, etc.). Customer service focus;
- Increasingly picky underwriting, but can be covered under many EPLI policies;
- Legal climate against employers;
- Many underwriters willing to include a small sub-limit for defense only;
- Monoline products at Lloyd's and Bermuda, with big retentions and major premium amounts.

Website Content Accessibility Guidelines ("WCAG")

- To date, has mostly impacted airlines and grocery chains, but litigation potential growing;
- The more creative the website, the greater the possibility for restriction;
- Likely covered with good EPL Third Party Coverage for discrimination. Must avoid EPL exclusion for Internet activities/Cyber.

Increasing Pressure on EPLI

- Employment -related "Breach of Privacy";
- Understanding "Ban the Box" regulations;
- Wage and hour ("FLSA") litigation;
- FULL Third Party cover or just harassment?
- Immigration Control Act of 1986 - Defense Expenses only offered, if available;
- Effect of opioids and marijuana on workplace;
- Reliance upon social media: "screen addiction";
- Packaging EPLI with D+O and Fiduciary Liability.

Directors and Officers Liability Issues

- Understand impact from seemingly unrelated exposures [Equifax; duck boats; "Me too"; limousine crash; major data breaches; PG&E];
- Market conditions - impact of heavy competition vs. large claims;
- Must understand coverages A, B, and C;
- Increasing interest in Excess Side A DIC;
- Potential “timing” problems with changing insurers;
- Investigatory and interview expenses;
- Issues when the Insured Organization is an ESOP;

Crime Insurance

- "Loss Sustained" or "Discovery" claims trigger?
- Importance of Third Party extension;
- Mandatory ERISA Fidelity insurance;
- "Ban the Box" - Termination as to any Individual Employee – Crime Policy Condition;
- Computer Fraud - Social Engineering Fraud (Potential Overlap with Cyber);
- Increasing importance of K, R &E Coverage.

Cyber Exposures and Insurance

- Grasp the three main insurance policy coverages;
- Ransomware/Extortion; computer restoration; Social Engineering Fraud;
- Payment Card Industry ("PCI") compliance - fines/penalties;
- Notification Costs Reimbursement - sub - limit or number of notifications?
- Internet of things (IOT) keeps expanding;
- Complex BI/EE exposures;

Inter-relatedness of Individual Insurance Coverages

- Everything rests with the actual allegations made not nearly so much with what client describes as having happened;
- "Duty to Defend" vs. "Indemnification"; "claims made" vs "claims made and reported";
- D+O insurance emerging as VERY important (the impact of decisions and governance);
- Crime insurance vs. Cyber insurance (some possible overlap);
- EPLI vs. Cyber ("WCAG");
- EPLI vs. D+O. (#MeToo))

Resources

- The D+O Diary (www.dandodiary.com);
- www.lexology.com and www.mondaq.com;
- Richard Betterley's Insurance Reports (www.irmi.com);
- Cyber: www.eriskhub.com;
- www.eeoc.gov (EEOC Charge Statistics);
- www.privacyrights.org and www.idtheftcenter.org (Data breach statistics);
- Cyber: www.krebsonsecurity.com

Miscellaneous Exposures/Insurance

- Intellectual property – how to identify and cover?
- Reps and warranties insurance;
- Artificial intelligence (AI) Siri and Alexa as base examples;
- Blockchain and Cryptocurrency – impact upon insurance;
- Natural disasters: flood, earthquake, mudslides, volcanic eruption, wildfires;
- Environmental and climate – impacting exposures.

Fiduciary Liability Insurance

- Distinguishing mandatory from optional insurance in ERISA;
- “Personally liable” aspect of ERISA;
- Fidelity insurance, and Employee Benefits Liability (EBL) Insurance – very different coverages;
- The importance of HIPAA civil money penalties coverage; relationship to Cyber;
- The importance of Affordable Care Act fines/penalties coverage;
- Issues when the insured organization is an ESOP.

Looking Ahead

"It's always something,
and that creates
opportunity!"