

Dont Be Surprised by Your Business Insurance

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When business owners buy insurance for their company, they expect to be covered in all instances. But when damages do occur, business owners might find that whether the damage is covered by insurance is not as cut and dry as they might have assumed.

How - and why - this can happen rests with the policy's definition of "occurrence," a term that provides coverage for incidents that happen during your policy period, regardless of when you file a claim. Before getting into how "occurrence" can be a potential problem, it is important to understand that a normal liability policy will cover acts of negligence. If an employee makes a mistake through being careless and harm to the business happens, the company should be covered. A breach of contract, however, is not an insurable event. If a company fails to complete a contract and the customer is harmed, the damages that result from that breach is normally not an insurable loss.

Under most business policies the definition of "occurrence" will basically focus on damages resulting from the negligent acts of the insured, not from a breach of contract. So here is where the distinction between a negligent act and a breach of contract can get blurry.

Say you have a chimney sweep business, and you enter a contract with a property owner to clean his chimneys every fall. One year your employee goes up the roof of the owner's home and cleans two chimneys, but for some reason didn't see the third chimney and it doesn't get cleaned. The homeowner then starts a fire in the uncleaned fireplace, the soot in the chimney catches fire and the house is damaged. Was the chimney sweep negligent in failing to clean the third chimney? Most litigation attorneys would say, "Yes." Was the company's failure to clean all chimneys a breach of that contract? Again, the answer is probably, "Yes."

So, if your insurance carrier sees this as a negligence claim, it will probably be covered. However, if it views this as a contract breach you might get a denial of coverage or, at the very least, a reservation of rights letter. This unwelcome letter will inform you that the claim might not be covered, and defense counsel might not be provided for you. In that event, you should get your private attorney involved and you will incur legal bills that you thought would be covered by your carrier.

To try to avoid this situation, you or your attorney can put in writing to your insurance broker that your expectation is that the conduct of your employees in doing their jobs will be covered by your policy. This won't guarantee that the insurance carrier will cover the claim, but it may give you a better leg to stand on if you get a reservation of rights letter, or worse, a denial of a claim from your carrier. You may want your business attorney to review your policy to make sure that it covers your business activities and that there aren't exclusions in the policy that could trigger a denial of a claim.

If you have any questions about your business's insurance policies, please [contact me](#).