UNDERSTANDING COMMERCIAL POLICIES: NOT SO EASY

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All that glitters isn't gold when it comes to analyzing coverage with respect to a commercial claim as distinguished from a homeowner's claim. By that we mean, there are many subtleties, nuances and complexities to a commercial claim which make it far more challenging to analyze than a homeowner's claim. Let us enumerate/highlight just a couple.

The first and most typical distinction is that a commercial policy for an operating business generally covers business interruption losses. That means a critical member of the team assisting the insured with the claim should include a forensic accountant. Because the language of the policy controls how the insurance company will determine how to calculate the business interruption loss, the forensic accountant should be someone whose expertise goes beyond the general analysis of a business income loss. This professional should have an expertise in analyzing such a loss according to the definitions and terms of the controlling policy language.

Another significant difference is the language and application of deductibles, sub-limits, and statements of value. Commercial policies use some or all of these tools to limit the amount of coverage in commercial policies in ways that do not exist in a homeowner policies. One glaring example is with respect to statements of value. The insured provides a schedule of the value of multiple structures to the insurance company. The insurance company will rely on those values to limit the amount of coverage to only the amount provided in the schedule. However, the gross coverage may be substantially greater for the property as a whole.

Yet another major difference is that more and more commercial policies are including an arbitration provision as opposed to an appraisal provision. By doing so, the insurance company is creating an alternative means for dispute resolution not just as to a disputed amount of loss but as to all issues concerning the claim. And as if that was not enough to change the playing field, insurance companies are literally doing so by providing for a forum for the arbitration in a location other than where the property is located and for laws of some other jurisdiction to apply.

One final overriding difference which often affects the analysis of a commercial policy occurs when it has multiple layers of coverage. That means instead of analyzing just one policy, multiple policies need to be analyzed and reconciled to determine not just the coverages but the rights and obligations of the insured depending on which layer is being implicated.

For more information, please contact Michael J. Higer of Berger Singerman's Insurance Team.

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