SUMMER 2016

COVERNOTES

THE NEW INSURANCE ACT EXPLAINED

The statutory framework governing insurance has changed. The reforms to the laws that govern the contract you have with your insurer may sound confusing at first, but there are some positive changes for all commercial policyholders.

The Act came into force on 12th August 2016 and represents the most significant change to insurance contract law in the UK for over 100 years.

The legislation is seeking to create a new balance between the policyholder and insurer. When debating the changes, it was argued that until now the law was weighted in favour of the insurance company, making it easier for them to resist claims.

The new Act has introduced a duty of fair presentation to enhance the existing duty of disclosure more in favour of the policyholder. Under this system, so long as you have informed your insurer of all relevant information in the right way, it is less likely they will be able to resist any claims that arise.

The Act brings clarity around what information you have to provide to your insurer, effectively requiring policyholders to undertake a reasonable search of information available to them.

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You need to be able to make a fair presentation of the risk that meets the following criteria:

1. Disclosure of every material circumstance which the insured knows or ought to know, or failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

2. Disclosure in a manner which would be reasonably clear and accessible to a prudent insurer (no data dumping allowed).

3. Information must be disclosed in a clear and accessible fashion.

Previously your insurance policy could be terminated if you did not disclose all the information deemed material to the risk. Now, as long as the non-disclosure or misrepresentation was not deemed to be deliberate, reckless or fraudulent, insurers must also consider paying a percentage of the total claim or impose extra terms into your policy, instead of just refusing to pay any of the claim at all.

Additionally, under the new Insurance Act, if you breach an existing warranty your cover is only suspended for the relevant part of the policy and only until you make changes to comply with it. Previous to the reforms, the insurer would have had the right to terminate the whole policy automatically and not pay any claims.

The new law sets out principles to be followed by all parties involved, with the aim of being sufficiently flexible to cater for the smallest business to major corporations.

The new duty of fair presentation and the new effect of a breach of the duty of good faith will only apply in relation to contracts entered into, or altered, on or after 12th August. We will work with you to explain the requirements of the Act and to help you identify the information that is required to be disclosed under the Act.

As part of this process your broker can also reaffirm their knowledge of the risks you face, as well as empowering them to negotiate with their panel of insurers.

If you would like to discuss the new Insurance Act, please contact us.

Source:
http://www.willis.co.uk/documents/Industries/Willis%20Technical%20Insight%20-%20Insurance%20Act%202015.pdf

BUSINESS INTERRUPTION: IS YOUR BUSINESS COVERED?

Business interruption insurance is, arguably, the most important insurance cover for any business.

If a fire causes your business facility to be unusable, even temporarily, what would you do next? It could take months before the damaged property is rebuilt and stock, machinery and equipment are repaired or replaced. Would your business be able to pay utilities, wages or any other standing charges without any income?

Traditional property insurance does not cover the costs associated with temporary moves or loss of income when a business must close on an interim basis. Without cover, many businesses may be forced to close down permanently.

Business interruption insurance cannot be purchased on its own, it must be added to an existing policy such as property or office insurance.

A business interruption policy can provide:

- Compensation for lost income if the business has to vacate its premises as a result of disaster related damage covered under a Property Insurance policy
- Compensation for the gross profits that would have been earned based on previous financial records, had the major loss/peril not occurred
- Cover for operating expenses that must be paid even though business is temporarily suspended
- Cover for the increased cost of working, including expenses of operating in a temporary location while repairs to the permanent location are completed.

Businesses must determine what maximum indemnity period is sufficient to cover the amount of time it will take for them to recover following a major loss. This includes considering the worst damage or disaster that could occur and estimating how long it will take to repair the damage. It is also important to consider how long it will take to recover customers and market share. Typical maximum indemnity periods range from 12 months to 36 months.

We can help you identify these major risks and indemnity periods, as well as making sure that your insurance cover is adequate for your needs.

Sources:
https://www.abi.org.uk/Insurance-and-savings/Products/Business-insurance/Business-interruption-insurance
https://www.cii.co.uk/login.aspx?ReturnUrl=%2fknowledge%2fresources%2farticles%2fbusiness-interruption-insurance%2f7051&source=2

CYBER RISKS: DON'T UNDERESTIMATE THE IMPACT

UK small businesses are underestimating the impact a cyber-attack could have on their reputation and must take steps to protect it, according to the findings of the Small Business Reputation and the Cyber Risk report, launched in February by the Government's Cyber Streetwise campaign and KPMG.

UK SMEs are also unlikely to escape the grasp of the recently passed EU General Data Protection Regulation (GDPR), despite the recent Brexit vote.

The GDPR is due to come into force in early 2018. After that, firms which fail to comply with the new regulations will be subject to fines of up to €20m (£15.4m) or 4% of turnover, whichever is greater.

This will put cyber insurance at the same level of importance as motor and employers liability insurance for many SMEs, especially those trading overseas.

Less than a third (29%) of small companies surveyed for the February Cyber Risk report that have not experienced a breach say the potential damage a cyber breach could cause is an "important" consideration. However, 83% of consumers surveyed are now concerned about which businesses have access to their data and whether it is safe, and over half (58%) say that a cyber breach would discourage them from using a business in the future.

The impact on the SMEs surveyed who had experienced a breach was long lasting. One in four (26%) of those surveyed who have experienced a breach have been unable to grow in line with previous expectations, and almost a third (31%) said it took over six months for the business to get back on track.

> "...traditional insurance policies may not respond to losses involving IT..."

Cyber risks are not faced just by e-commerce companies. Any company, which is reliant on computer networks, digital information or the internet, faces major cyber exposures. Most SMEs face some kind of exposure and in many cases traditional insurance policies may not respond to losses involving IT.

We can help put together all the key pieces of an information security package by co-ordinating the work of information security consultants, and assessing your exposures with your insurance coverage needs.

Cyber insurance can deliver protection for SMEs in many ways including:

- Third party and employee privacy liability for damages and claims expenses as a result of a privacy breach
- Notification expenses to notify victims of privacy breaches
- Forensic costs to contain a breach and carry out the necessary forensic audits following a breach
- Public Relations (PR) expenses to help limit the reputation impact following a security breach
- Payment Card Industry (PCI) fines
- Multimedia Liability, Intellectual Property Infringements and Libel and Slander due to email or website content
- Data/Electronic information loss: The costs to restore data that has been lost or corrupted
- Indemnification for loss of revenue following unplanned system outage and increased cost of working
- Cyber extortion coverage: Covers both the costs of investigation and the extortion demand amount related to a threat to commit a computer attack
- Cyber terrorism coverage
- Reputation coverage extension (in some cases).

Ask us how we can help you assess what your cyber insurance needs may be.

Sources:
http://www.smeinsider.com/2016/02/10/smes-underestimating-impact-of-cyber-attacks/
http://www.willis.co.uk/Client_Solutions/Services/Risk_Management/Cyber_Risk/
http://www.willisfinexglobal.com/dando_cyber.html

PROFESSIONAL INDEMNITY: BE PROTECTED

No-one wants to make a mistake in their work but even the most qualified of professionals can make mistakes.

If you are alleged to have provided inadequate advice, services or designs to a client, professionals can find themselves faced with some hefty expenses.

Professional negligence, loss of documents or data, unintentional breaches of copyright/confidentiality, loss of goods/money can all lead to expensive claims. As can defamation and libel cases, which are becoming increasingly common.

Whilst most businesses enjoy good relationships with their clients, one small mistake can change this overnight, especially should the clients suffer a significant loss as a result of the mistake.

The business world is constantly changing and it is not just those with technical expertise that can face claims. Corporate scandals, increased shareholder awareness and extended rules on corporate governance have made being a company director an increasingly difficult task.

Stakeholders have far greater forms of remedy against individual directors and there is an increased willingness to pursue claims against them.

Once a claim is alleged against a director or professional for any wrong doing they have two sources of protection – they can either turn to their company to seek indemnification, or they can seek assistance from their company's professional indemnity (PI) policy.

Many professional and industry bodies and regulators require professional indemnity insurance for practicing members. These include accountants, engineers, surveyors and doctors.

Most professionals working on a contract basis will almost certainly need PI cover, as many clients request this to be in place before a contract is awarded.

Whether or not the individual is ultimately held responsible, the defence costs associated can be extremely expensive and the process can take months or even years of their time.

For directors, a form of professional indemnity policy called Directors and Officers provides personal asset protection should the employer's indemnification fail for any reason.

For the company, a policy provides balance sheet protection where the company has indemnified its directors.

It is not only the directors of large companies that need to be protected. If an SME does not have D&O insurance, directors face a greater risk of not being able to defend themselves.

SMEs face exactly the same risks and regulations as their larger peers and often do not benefit from in-house HR or legal teams when faced with a claim.

Claims from employees and regulators are particularly prevalent and may involve anything from unfair dismissal, discrimination to health & safety misdemeanours.

Without the correct insurance the directors' personal assets are at risk. To find out more about how you can protect yourself and your business get in touch with us today.

Sources:
https://www.markeluk.com/articles/what-is-professional-indemnity-insurance
http://www.willisfinexglobal.com/pi_contractors.html
http://www.willisfinexglobal.com/dando_directors.html
https://www.abi.org.uk/Insurance-and-savings/Products/Business-insurance/Liability-insurance/Directors-and-officers-liability-insurance
http://insider.zurich.co.uk/market-expertise/just-corporates-smes-need-cover/

THE BENEFITS OF TELEMATICS

In addition to fuel, insurance can be one of the major costs faced by fleet operators.

There are, however, methods that can be employed to improve the overall resilience of your fleet. These include risk management procedures aimed at identifying risks faced and the provision of cost-effective solutions to mitigate these risks.

Telematics is one method by which you can both reduce your insurance costs and potentially also reduce the frequency of any claims.

Telematics have been around for a while and as technology has improved, insurers are starting to develop products to take into account the potential for better managed risks.

Tracking your vehicle movements via a GPS based system also allows data to be collected which can show:

- Driver locations and routes
- How long your drivers have been on the road
- How your staff are driving (such as speed of acceleration, braking and cornering)
- The impact of technology on driver behaviour.

This data can help the fleet manager to provide training to their drivers as well as adjusting any routes as necessary to reduce risk.

The long-term cost benefits of telematics-based fleet insurance can outweigh any costly initial outlay, potentially lowering insurance premiums as a consequence of this increased and more effective risk management approach.

Claims efficiency and reduction is also key for company fleet managers, and telematics can enable a proactive approach to claims management.

Company car drivers, the business itself and the associated insurance policy are integral parts of the claims process.

There should be clear claims management procedures set both within your operation and with your insurers to ensure that when a claim is made against your business, the information you gather is effective and comprehensive enough to improve your chances of defending the claim.

Telematics can help a fleet manager manage the claims process in the event of an accident. Telematics data leading up to a collision can help identify who was at fault, plus camera footage can, in-turn provide protection for drivers and assist in defending or settling claims quickly.

Let us show you how telematics can have a positive effect across your business as we assess your fleet risks regardless of how small our or large your fleet may be.

Sources:
http://willisgroupservices.com/PROD2LZ/Instances/PROD2lz/documents/UK/Corporate/Willis%20Transport%20Forum%202015_Synopsis.pdf

Willis Transportation Practice – Bus and Coach Brochure

AVOIDING UNDERINSURANCE

Inadequate business interruption insurance cover can seriously impact the ability of a business to recover following a loss. However, business interruption is a notoriously difficult area to understand and The Insurance Institute of London estimate that around 40% of policies are underinsured.

The problem arises due to misunderstandings of the term ‘gross profit’. The definition of ‘gross profit’ for insurance purposes differs significantly from an accountant’s understanding of the term. As a result, businesses frequently declare incorrect figures, resulting in underinsurance.

Committed to delivering best practice in all that we do, we aim to ensure such a scenario never arises. Drawing on our industry knowledge and utilising the latest software, including business interruption calculators, we take a methodical approach to gross profit calculation, enabling us to help you accurately assess the level of business interruption cover you need to have in place.

We will work closely with you to look at all eventualities, ensuring your indemnity periods are set accordingly.

Throughout the process, we will clearly explain key terms, ensuring you understand exactly the information required and whether there are any other factors you need to consider. In this way, we are able to arrange the optimum solution for your needs, ensuring your business and interests are adequately protected, whatever happens.

Source:
http://insider.zurich.co.uk/expert-lab/avoid-underinsurance-with-our-business-interruption-calculator/?ref=email&freq=monthly&sec=roundup-preferences-title&emailID=240

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