



Insurance: Why It Is Good For Your Company's Health

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Many techies have an aversion to insurance. Basically, you are paying a monthly premium to an insurance company for something that may not happen and when an incident occurs that is arguably covered by insurance, there is either an exception to coverage or there is a large deductible leading up to the actual loss not being covered. Worse, if an insurance company pays a claim to someone else, it may have the right to recover the loss from you. Understanding the gaps in customary policies is a key reason to get a good risk management consultant—more than just an insurance “agent”.

The basic fact of life is that most companies will not enter contracts with your company without evidence of insurance—and the “industry standard” document that evidences insurance coverages is referred to as a “Certificate of Insurance” or a “COI”. It is written on a standard form—referred to as an “ACORD” form. ACORD is an acronym for the insurance industry’s nonprofit standards developer. Basic rule—an ACORD COI is not an insurance policy and does not provide insurance, it simply confirms that a party has the insurance covered by the form. Even more arcane, the COI is NOT issued by the insurance company, and is not binding on the insurance company. The COI is issued by an authorized broker or agent, and the insurance company is not bound to notify the person to whom the COI is issued of any changes in coverage. Notwithstanding these limitations, most contract counter-parties will insist on an ACORD COI as a condition to entering into a contract with your company.

The most common contract where a COI is needed is a service contract and a lease—and the most common coverages that a counter party to a contract or a landlord under a lease or sublease wants to see are: (i) insurance that protects you and the landlord/contract party against third party claims for injury to person or damage to a third party’s property—this is known as commercial general liability insurance, and you purchase it with a per incident coverage amount and an annual aggregate coverage amount, often in the range of \$1MM or \$2MM per incident, and \$3MM to \$5MM, in the aggregate, or a combined single limit and aggregate coverage amount; (ii) insurance that protects your company against damage to the company’s property (or “first party” loss) in the event of a casualty, like fire—this is known as property insurance, and you purchase it based on the “replacement value” of your property; and (iii) worker compensation insurance, which is pretty self-evident, and only applies to employees, not independent contractors. Many landlords have specific additional coverages that you may be required to carry—like insurance for fire sprinkler leakage in leased premises, insurance for business interruption, if you have to relocate during a casualty and cannot

generate revenue from your space, and insurance for loss when an employee or agent gets injured or injures a third party in a company owned or non-owned vehicle.

As a tech company, you need to consider specific coverage for loss of data and data breaches, a property/casualty policy will generally not cover this, and most liability policies specifically exclude “data” as tangible property. You also need to know what coverages you are not carrying (for example, many tech companies do not carry business interruption insurance—although it is a commonly requested coverage, because everyone can work remotely in the event of a casualty and data is stored off site).

Most landlords and counter party’s want to be named as an additional insured under the foregoing policies, so that the coverage provided runs to their benefit. While many insurance policies provide for an automatic addition of a contract as an insured contract, the better practice is to not rely on this, and to contact the insurance broker to make sure the proper endorsement is issued. For property insurance, there is no automatic additional insured concept, so an endorsement is generally issued. All of this needs to be shown on the COI.

The last concept you need to understand is “subrogation”. This means that an insurance company gets to “stand in another’s shoes” if it pays a claim. It applies to both commercial general liability and property insurance, and most contracts and leases require a waiver of this right, so that the insurance company that pays a claim does not turn around and sue your contract counter party or you based on the claim it honored! Most policies allow for a pre-loss waiver of the insurance company’s right of subrogation. This needs to be shown on the COI.

Practical Advice: (i) insurance covers major losses, not every day losses, so pay for what you need, (ii) get the system down so you can issue COIs quickly and correctly, (iii) discuss your business with an experienced risk management person so that you can plug gaps in coverage and manage risk of loss and cost, (iv) figure out the relationship between deductibles, primary coverage and umbrella coverage—so you can better manage cost; (iv) understand which coverages you do not carry and why. Lastly, work with a risk management professional and a lawyer to understand the risks to be covered in basic contracts.



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