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Large Retail Commercial Property
Alarm Manufacturer
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ROCKY MOUNTAIN

Wholesale Insurance Agency

A Newsletter for Clients and Friends
of Rocky Mountain Wholesale
Insurance Agency

AUGUST 2015

Casual Promises Can Land an Agency in Court

When an insurance producer tells a client that he will check coverage limits every renewal to make sure they are sufficient, does that create a "special relationship" between the producer and the client? If so, does the producer then have additional legal obligations to take care of that client? According to the high court in one state, the answer may be "yes" to both questions.

Deborah Voss owned three businesses in upstate New York. In 2004, she obtained property and liability insurance for her businesses from a local insurance broker. At the time of the initial meeting, the broker requested her sales figures so that he could calculate an appropriate amount of business income insurance. He also told her that his agency would "reassess and revisit the coverage needs as her businesses grew." He repeated this statement when he presented his proposal to her at a later meeting. She accepted his proposal and bought the policies.

Two years later, one of Voss's businesses purchased a building that was double the size of her previously rented premises. All three businesses located there. She reported the purchase to her broker, but the next renewal of her property insurance policy contained the same limit for business income insurance that the previous two policies had.

The next year, the building developed a roof leak, causing significant water damage and forcing the businesses to close for a time. Voss hired a contractor to fix the roof, but a month later the roof leaked again, causing even more extensive damage and further business interruptions.

That spring, Voss's property policy renewed with the business income limit reduced to \$30,000. She questioned a representative from the insurance agency, who promised to look into it. However, the limit remained at \$30,000; Voss, preoccupied with her damaged property, failed to follow up. A third roof leak occurred the next year, causing the businesses to shut down again. Voss, who had received payments of only \$3,200 for the first loss and \$30,000 for the second, sued the roofing contractor, the insurance company and the broker. The suit against the broker claimed that she and the broker had a "special relationship." The broker, she claimed, had negligently failed to obtain sufficient amounts of business income insurance.

The broker moved to have the case dismissed. The trial and appellate courts agreed, and Voss appealed to the Court of Appeals, New York's highest court.

This court ruled that a special relationship may have existed between Voss and the broker and a jury should determine the truth. The majority of the judges found that the interactions between Voss and the broker regarding business income coverage may have been enough to create a special relationship because Voss relied on the broker's advice. The fact that Voss knew what the limits were was irrelevant because of the potential special relationship. However, they cautioned that

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The Importance of Employment Practices Liability Insurance

Since Title VII of the Civil Rights Act of 1964 passed, the issue of employees' rights continues to be controversial. Employers involved in interstate commerce are prohibited from discriminating against applicants.

Understanding How Fast Lawsuit Risks Are Increasing

As more laws are enacted for workplaces, employers face a higher risk of lawsuits. The likelihood of discrimination lawsuits is especially high. In order to minimize this risk, employers need to create a workplace that offers workers equal rights, opportunities, job access, working conditions, job security and opportunities for advancement. They must also strive to create a workplace that is in compliance with federal employment guidelines for mature and disabled workers. During the time period between 1992 and 2004, the number of individual discrimination charges jumped from 72,302 to 79,432 annually. These figures, which were collected by the Equal Employment Opportunity Commission, include all types of discrimination filings.

The 2010 Wal-Mart Example Claims of workplace

discrimination hit a record high in 2010. The total number of claims was 99,922 during the fiscal year. This number gained national attention after the story of a class-action discrimination lawsuit was filed against Wal-Mart. The U.S. Supreme Court threw out the case. This case stated that over 1.5 million female workers faced workplace discrimination in the aspects of pay and promotions. The Court ruled that the case couldn't

continue because of the varied circumstances of the plaintiffs, which lacked uniformity. This was the most high-profile employee discrimination case of 2010. It was also the largest class-action lawsuit in U.S. history.

The Small Business Perspective

Wal-Mart had a policy against uniform employment practices. Since duties were delegated to individuals in specific branch locations, the case was overturned. Smaller companies need to take the examples of larger companies by ensuring that they're properly protected from such lawsuits. On a smaller scale, discrimination lawsuits could devastate or bankrupt a small business. When employers have more personnel policies in place, there are fewer lawsuits filed. This is especially true if the policies are outlined well in a handbook and given to new employees. Educating new employees thoroughly is important. It's also essential to fully educate employees who already work for the company at the time such changes are made. However, even if the law is carefully interpreted, there are still times when employees may allege discrimination. During such times, employers are always thankful and reassured that they possess Employment Practices Liability Insurance. This coverage is commonly referred to as EPLI.

Importance Of Employment Practices Liability Insurance

Most people aren't aware just how important this type of coverage is. The importance of it can be discovered by carefully examining the workplace. Most workplaces have an

ethnic and racial composition that is constantly changing and evolving. In addition to workplaces, the entire country is changing because of this factor. Cultural aspects have become one of the most common roots of discrimination cases. Although America is known for high levels of educated workers, discrimination continues to thrive among employees. They're taught in college to tolerate and accept other cultures. However, exercising equal treatment in the workplace seems to be a problem for many. In addition to this, sexual harassment, handicap bias actions and age discrimination lawsuits are common. Workplaces facing these issues are finding themselves in serious legal trouble.

The Solutions

In order to avoid legal battles, it's important to have EPLI. Although many employers think it's too expensive, it may save a company from going under if a lawsuit is filed. Have a professional perform a risk assessment to determine how much insurance is needed. In addition to having ample coverage, it's important to implement policies in the workplace that encourage equality and discourage discrimination. Information needs to be made available to workers to make them aware of

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special relationships between clients and brokers are the exception, not the rule, and it was still up to Voss to prove that such a relationship existed.

Three of the seven judges disagreed with the conclusion, saying that, though a special relationship may have existed at the beginning, it did not exist by the time the losses occurred.

By then, Voss was seeking the broker's advice but not receiving it. The judges wrote that the agency's "gratuitous promise" at the beginning did not create a continuing obligation to provide advice.

What can insurance producers take from this case? Every state has its own standard for determining whether a broker has a special relationship with a client. Brokers should be aware of where their states draw the lines between ordinary and special relationships. They may, for good business

reasons, decide to cross the line, but they should do so with full knowledge of what that implies for their legal liabilities. If they decide to avoid forming special relationships, they should steer clear of promises about monitoring and updating coverages and limits; document clients' acceptance and rejection of recommended coverages and limits; and keep that documentation easily accessible.

Doing the best job possible for a client does not have to mean taking errors and omissions risks.

Our Specialty Programs

- Habitational
- Professional Liability
- Lessors Risk
- Commercial Automobile
- Adult Care Facilities
- General Contractors
- Manufacturers
- Nursing Homes
- Artisan Contractors
- Restaurants
- Security Guard Firms
- Non-Profit Organizations
- Public Entities
- Public Utilities
- Wastewater Treatment
- Cyber Liability
- Professional Liability
- Commercial Earthquake
- Employment Practices Liability
- Contractors Pollution Liability
- Workers Comp

While we can write almost any type of commercial risk, we have the pen on these programs and get can favorable terms and pricing. We encourage you to submit all of your commercial risks to us and our underwriters will get back to you in 48 hours. Please submit your risks at least 3 weeks before the renewal date.

Here are some Risks we have written Last Month:

Risk	Premium
Small Nursing Homes Chain	\$175,000
Large Retail Commercial Property	\$27,500
Alarm Manufacturer	\$98,300
Non-Profit Baseball League	\$33,700
Small Water District	\$41,650
Disability Ramp Contractor	\$12,900
Security Firm	\$32,100
EPLI for a Cement Company	\$9,450
Workers Comp for General Contractor	\$68,400

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what discrimination is and how to avoid it. Encourage workers to treat one another with equal and mutual respect. The press and human rights organizations are becoming more vigilant about spotting discrimination in multinational companies. With so many scrutinizing eyes watching, it's important to regularly assess the workplace to ensure that discrimination risks are low. Educate executives on proper hiring, firing and disciplinary guidelines. It's important to ensure that the executives won't be a liability.

There are two factors that have been blamed for the rising number of lawsuits. First, employees being educated about their discrimination rights is resulting in them understanding and standing up for those rights. In addition to this, the financial hardships people are experiencing from the recession are making them desperate enough to file claims that aren't legitimate. Regardless of whether claims are legitimate or not, it's essential to have EPLI to protect the business.

Meet the Team

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