

CORPORATE DIRECTORS FORUM

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I. Unfavorable Insurance Industry Trends

A. Third Party (liability)

1. Commercial General Liability Policies:

- a. Exclusions of coverage for most intellectual property torts (trademark, trade dress, copyright, patent, trade secrets)
- b. Exclusions for employment related torts (wrongful termination, unfair competition, discrimination)

2. D&O

- a. Also may have exclusions re IP and employment torts
- b. Exclusions may even defeat traditional securities coverages

B. First Party (damage to your own property)

1. Property damage coverage has always been restricted to “direct physical loss or damage” to covered property. Covered property usually includes computer systems and data (“Electronic Data Processing”) coverage. However, insurers have recently argued that corruption or loss of data is not “physical loss or damage” to property. Therefore, e.g., if a virus causes damage to your computer system, insurer may refuse to pay.
2. Other important coverages, such as loss of income, accounts receivable, valuable records, and sometimes, employee dishonesty and theft are also tied to requirement of “direct physical loss or damage.”

II. Optimizing Insurance Protection and Recoveries

A. Importance of well educated in house legal, risk manager or CFO

B. Importance of good brokers knowledgeable about latest industry trends and products

C. Available products include EPLI, IP, & patent liability policies. Also, broader EDP and computer virus coverages.

D. If you do suffer a loss, make sure all first party and liability claims are reported to insurer immediately and in writing.

E. Do not accept “no” on major claim without careful review of all policies and case law. Insurers often can be persuaded to pay if provided with a sound rationale!