

Risk Monitor



Discrimination Law Suits Can Be Pricy and Damaging



The 21st Century brings a more racially and ethnically diverse workforce. With it rises the possibility of discrimination lawsuits, which can be both pricey and damaging to companies.

Just a few years ago, the largest settlement of this kind occurred when the Coca-Cola Company agreed to pay nearly \$200 million to settle a racial bias lawsuit brought against it by former and current employees. While Coke made the decision to pay the settlement amount on its own, businesses of all size can purchase insurance to avoid taking similar hits.

Employment practices liability insurance (EPLI) covers

legal costs, damage awards, and settlements that arise from discrimination, sexual harassment, or wrongful termination lawsuits, making it a must for most medium- to large-size businesses.

As expected, such coverage comes with a pretty hefty price tag. For instance, the Insurance Information Institute estimates that \$1 million worth of coverage with a \$10,000 deductible for a company with 200 employees would cost approximately \$10,000 to \$20,000 in annual premiums.

The good news is that the average bias or harassment settlement rarely approaches the \$1 million mark. However, because the median award for employment-related lawsuits filed in U.S. District Courts is estimated at around \$200,000, EPLI coverage may best be looked at as a necessary bargain: EPLI coverage is available to mid-sized companies for between \$40 and \$50 a day.



Many of our clients must routinely execute contracts with their customers prior to providing products and services. Virtually all of these agreements include indemnification and insurance clauses. Prior to executing the contract, please let us review this wording to confirm that your insurance program complies with the contract requirements.

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Where is Your Coverage When the Lights Go Out?

In the aftermath of a blackout that left some 50 million American and Canadians powerless and, others stranded, many people are asking how and why the August 2003 Northeast Blackout occurred. While most were merely inconvenienced by the effects of the blackout, some significant property losses undoubtedly were suffered. What property loss might occur as a result of a blackout? What factors might come in to play to limit coverage availability or applicability? What types of coverage are typically available?

First and foremost, it is advisable that you look into whether your insurer offers any kind of coverage for food spoilage or other loss caused by failure of power that originates outside of the insured premises. In lieu of such an endorsement to the policy, most property policies exclude claims arising out of loss resulting directly or indirectly from power failure that does not emanate from the covered property. In other words, if the power loss occurs somewhere within the vast and complex grid that powers your home or business, it is not covered. The London Financial Times noted that companies most likely to hold such coverage “are those with perishable goods they need to protect, such as supermarkets, other grocery stores, florists and restaurants. Theatres, hotels and restaurants suffering perhaps from loss of business in cities last night were unlikely to have any chance to make a claim.”*

It is important to note that there are many different potential causes of blackouts. A power crisis in California in 2001 was caused by a confluence of factors which were foreseen long before the rolling blackouts occurred, making them very different from the August 2003 Northeast Blackout, which occurred despite largely adequate power supply and with no advanced warning. These differences may impact upon the coverage afforded for any given claim as the California scenario may be argued by your carrier to be a “known” hazard, which was foreseeable and preventable, thus excluded.



In addition to the limited types of coverage available under homeowners and



commercial property policies, “Power Plant Insurance” may be available under a Boiler & Machinery or SMP (Special Multi-Peril) policy. If you have or need such a policy to cover your business, check with your agent as to whether or not this endorsement is available and if so, for what additional premium. Note, however, that such coverage often comes with time constraints for the blackout duration. For example, a blackout that lasts for less than 24 hours may not be a qualifying trigger for coverage, despite whatever losses have been incurred.

Last but not least, what about the disruptions at airports that left travelers stranded during the Northeast Blackout? Coverage may be available on your travel insurance policy - if you purchased one. If you are planning a trip in the near future look into this valuable coverage, but be prepared - some companies offer a dizzying array of products for just about every type of travel possibility. It can be confusing even to the well informed. Check the fine print before you purchase as there is a great deal of variability in coverage. Certainly, if a blackout caused you to miss a flight connecting you to a cruise, it would be reasonable to expect that travel insurance would reimburse you for the lost money spent on the cruise, but again, check the fine print for any power failure exclusions. Some policies will reimburse you a set amount per day for having to make alternate travel arrangements due to an unforeseen delay. On the other hand, if you are unable to find a hotel room and you find yourself lying in a cot in the airline terminal as many hapless travelers did during the Northeast Blackout, you may just have to grin and bear it.

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Getting a Handle on Your Insurance Company's Stability and Strength

- A Brief Guide to the Rating Agencies

Long before 9/11, insurer stability was an important but overlooked factor in the insurance purchase decision. Now, after 9/11, it can no longer take a back seat to issues like coverage or price. Insurer insolvencies are on the rise as old liabilities such as asbestos come back to haunt some companies, and newer exposures such as corporate scandals, accounting irregularities and toxic mold threaten to keep actuaries busy for years to come. With the above in mind, how does one factor the financial strength of insurance companies in to the buying decision?

The answer lies somewhere between Standard & Poors, Moody's, Duff & Phelps, Fitch and the granddaddy of them all, A.M. Best. All the aforementioned companies provide some kind of measure of insurer stability and financial strength. All use different scales, different factors and somewhat different terminology in their analyses. Invariably, all the rating agencies use a mixed bag of criteria to develop their ratings and they all do comprehensive analyses of the companies with a "Readers Digest" version often available online for free.

Let's take a quick tour of the A.M. Best rating structure just to get a taste. As always, your agent is a good source of information regarding the companies you are insured with or contemplating insuring with, but feel free to browse the Best, S & P or any of the other websites for your own edification as well.

A.M. Best (<http://www.ambest.com>)

A.M. Best provides ratings according to financial strength and size. There are sixteen distinct financial strength ratings which are further boiled down to ten general descriptors, such as "Superior", "Excellent", "Very Good", etc. It's worth noting that many in the insurance industry consider anything below "Excellent" to warrant caution, especially if it is the result of a recent downgrading from a higher rating. Such a downgrading often precedes a further downgrading so it is important to look into the history and see what the rating has been over the past two or three years or longer.

In addition to the above general descriptors, there are further categorizations within the A.M. Best rating structure. The "Superior", "Excellent" and "Very Good" rating descriptors

and their respective ratings all comprise the "Secure" category of ratings. Everything else gets lumped into the "Vulnerable" category.



A.M. Best also has financial size categories that measure the company according to factors such as statutory surplus, a measure of the capacity of the company to pay claims. Larger companies with higher statutory surplus will end up on the higher end of the scale, which tops off at XV (15) while smaller, less well-heeled companies will end up on the lower end, starting at I or 1. A company with an A++(XV) rating by A.M. Best receives top honors and would appear to be the "best" bet for the long haul. Though financial stability is an important factor, other factors, like a good reputation for paying claims should weigh in the decision making process. Again, talk to your agent and find out more about the companies you are considering purchasing coverage from. They will be happy to give you insight into the history of the company and point you in the right direction to access available resources to help you make an informed decision. While there are no crystal balls that can predict the future outlook for your insurer of choice, there are certainly benefits to making an informed purchase decision.

Understanding Directors and Officers (D&O) Liability Insurance

Directors and officers liability insurance, or D&O, covers corporate activities. Because a corporation is legally a person, as are the directors and officers who direct it, D&O serves to protect each from liability associated with various actions and inactions.

But what happens when corporate interests differ from those of these individuals? In short, the coverage is not the same. An indemnity policy protects the corporation, while a D&O policy covers the individual acts of directors and officers. The two types of policies can work hand-in-hand to provide complementary coverage. They can also work apart.

D&O policies do not cover criminal acts and are primarily for civil remedies, mainly damages. First and foremost, D&O policies represent the interests of the shareholders, as a group, and other corporate constituencies in directing the business and affairs of the corporation within the law.

D&O policies offer individual directors and officers the protection they need from personal liability and financial loss stemming from wrongful acts committed while acting as a corporate officer or director. Most policies also cover the liability of the corporate entity itself when the liability is from a claim involving the company's purchase or sale of securities.

Keep in mind, all companies - those that employ one or more individuals, work with customers, clients, or even competitors - are at risk. Any perceived violation leaves both the directors and officers of the company, as well as the corporate entity itself, at risk for lawsuit and in need of applicable coverage to protect adequately the business as well as the directors and officers involved.

Employment Practices Liability (EPL) can provide additional coverage, acting like an excess policy in an employment situation, and can also involve claims by and against management. Enhanced coverage on a standard D&O may cover EPL, but should be verified with your insurance agent. Actions including wrongful termination or demotion, breach of contract or agreement, negligent evaluation of an employee's performance, refusal to hire or promote someone, workplace harassment, failure to follow the company's personnel manual and more, can fall under EPL.

Insurance experts advise protecting yourself and your business with indemnity or D&O coverage and suggest you understand exactly what your policy covers. Remember, if your D&O policy does not cover EPL, you should consider purchasing EPL coverage, or have it written into your D&O policy.

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