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[the business interruption e-source]

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BUSINESS INTERRUPTION CONSULTANTS, INC.

DUTY OF AGENT — NEW LA CASE

From 1989 until 2005, the broker consulted with and sold property and casualty insurance to the insured (a private school). Every year the broker provided a written proposal of recommended coverage and met with the insured to discuss these recommendations. From 1989 until 1999, the insured purchased \$250,000 of extra expense coverage. In 1999, the designation was changed to business income/extra expense, but the limits remained the same. For the 2003-2004 policy, the limits were increased to \$350,000. When speaking with the insured's business managers, the broker explained business income/extra expense coverage protected the school against the risk of extra expenses that would be incurred while fixing its physical damage.

As a result of physical damage caused from Hurricane Katrina that occurred in August of 2005, the school was closed for several months. The insured filed suit against the broker alleging that the broker was negligent in failing to advise the insured that business income/extra expense coverage included tuition loss. The trial court found that the insured provided a preponderance of evidence that the broker had breached the duty of care required of an insurance broker. The award to the insured was \$3,167,606, plus court costs and interest.

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The insured is a private school. The agent annually provided a limit of BI/EE (\$250,000, then \$350,000), and offered higher limits, which the insured rejected (with documentation). Because of Katrina, the school suffered a \$3,000,000 BI/EE loss. They hired an "expert witness" to testify that the agent should have used a BI/EE worksheet. The agent's point was that since they would not even buy more than \$350,000 when offered higher limits, what did it matter?!

The bottom line: The agent was held liable for failing to discuss the BI worksheet with the insured (assuming there was one), but the BI/EE worksheet would have probably saved his bacon! We keep saying it is the BI worksheet that determines the insurance need. Without one, how do you know what limit to chose?



For sending us the information for this article, our thanks go to:
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FAMILY FIRE

Many of us have talked to our families about what to do in case of a fire or other emergency. If you have not, you need to do so today. Oftentimes, we say to meet at the mailbox, but guess where the fire truck will be parked? Instead, plan to meet at a neighbor's mailbox or some other landmark out of the way of the emergency responders. Make sure the older members of your family know they are only responsible for themselves and not other family members. Also, they should wait at the meeting place as long as it takes for you to come get them. Keep everything as simple as possible and practice the drill often so the response will be automatic.

For more information on this topic:
www.usfa.dhs.gov/downloads/pyfff

SAFETY

