

Contract Litigation Insurance A Valuable Tool For Business

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Many business contracts include “fee-shifting” provisions which require the losing party in any breach of contract litigation to pay attorneys fees incurred by the prevailing party.

The financial risk of being liable for attorneys fees if a breach of contract claim fails can be a disincentive to filing claims to enforce your contact rights.

But a new and innovative form of insurance coverage – Contract Litigation Insurance (CLI) – addresses this issue. Policies offered by Zurich companies in North America can be applied for within the first sixty (60) days after filing a lawsuit, or within sixty (60) days of service for defendants being sued.

Defendant Contract Litigation Insurance (DCLI) is the newest form of this type of coverage, providing similar benefits to those being sued for breach of contract.

The availability of CLI insurance, and its potential premium cost, can be factored into a party’s pre-litigation planning and may be crucial in determining whether a lawsuit should be filed.

Likewise, a defendant at risk for breaching a contract, may sleep better at night knowing that a potential judgment may not bankrupt the company, or damage its financial standing as much as would otherwise be the case, if coverage was absent and attorneys fees had to be paid in addition to any damages for the actual breach. It is, after all, not uncommon for attorneys’ fees to exceed the amount of damages for breach of contract, especially if litigation is long and complicated.

In addition, businesses may decide to alter their performance strategies under existing contracts, even if they know their actions risk a claim for breach, if CLI or DCLI insurance provides a cushion of support with respect to “fee-shifting” and the likely damages for breach are manageable.

While no company should expose itself to the likelihood of large punitive or other exemplary damages for knowingly breaching an existing contract, not every situation is black or white, and CLI/DCLI insurance may be a factor to consider in determining the best and prudent course of action.

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