

Many small to medium-sized business purchase commercial general liability insurance or some other type of business insurance to protect the business against claims or lawsuits. In exchange for premium payments by the business, an insurance company provides coverage by: (a) hiring and paying for attorneys to represent the business in a lawsuit; and (b) paying any settlement or verdict against the business during a lawsuit. Generally, the relationship between the business, the insurance company and attorneys hired by the insurance company are not problematic. There are times when an attorney hired by the insurance company has a conflict of interest or a potential conflict of interest. Even though insurance hired attorneys only responsibility is to the business, there is an inherent tension because the attorneys want to receive repeat business from the insurance company. Because of this tension the insurance company paid attorney cannot address whether a claim should be covered by an insurance policy. This tension increases in cases where a Plaintiff claims his damages are more than the amount of money payable under the policy or, in some jurisdictions, where the Plaintiff claims he should get punitive or exemplary damages from the business.

As an example: Plaintiff and Business A's delivery driver are involved in a car accident. Plaintiff claims he was seriously hurt and needed an expensive surgery because of the accident. Let's say Plaintiff wants \$2.0 million dollars to cover his past and future medical bills, past and future lost wages, permanent impairment and any emotional distress. Business A has an insurance policy with Company B and that insurance policy will pay up to \$1.0 million dollars for the negligence or fault of the Business or its employees. Business might be responsible for paying from its own checkbook \$1.0 million dollars to make up the difference.

Another example is the same Plaintiff wants a jury to punish Business A for causing Plaintiff serious injury and asks for punitive damages. In Colorado, an insurance company is not required to pay punitive damages. Business A would be responsible for out of its own pocket any punitive damages.

A business owner should give serious consideration to hiring independent counsel in the above circumstances because:

6. Usually, the attorney hired by the insurance company may imply to the business owner there is a need for personal counsel;
5. Personal counsel owes allegiance only to the you and your business;
4. An independent attorney not paid by the insurance company can put pressure on both the plaintiff and the insurance company more reasonable in reaching settlement;
3. The independent attorney can talk with the insurance company about why a claim should be covered by the policy;

2. Personal counsel can better protect you and your business assets; and
1. Using personal counsel gives you peace of mind.

For more information please contact us at info@strategicdefenselaw.com

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