



Maneke law column

How well does your insurance protect you?

This column is for you publishers out there. Those of you reading this who are editors, writers, advertising folks, go get another cup of coffee and take a break. We'll be back to you when the September column comes around. (And if you haven't already, get your registration in for the September convention! I want to see you there!)

Now, dear Publisher, let's talk. Seriously. In the last couple of months, two of you in this group have been threatened with suit. One was for libel; one for copyright infringement. The letter arrived, the email arrived, the phone call came. You called for advice (*for which I am always greatly appreciative) and one of the suggestions you get is that we put your insurance carrier on notice.

And so you pulled out your insurance policy and sent a note off to your claims department. And in each case, the response you got was that you didn't have coverage for this risk. That is obviously not the response you want to get.

The truth is that writing insurance coverage for a news publication is totally different than writing insurance coverage for any other business in your town. Most insurance agents are familiar with their general liability ("GL") coverage policies. They cover you for slips and falls on your property. They cover you for fires and building collapse. Your workers' compensation covers you for employees who are injured at work. In those ways, your business is just like Joe's Hardware Shop and the local clothing store.

But if you read your GL policy carefully, you will probably find in the fine print that it does NOT cover you for the published content of your newspaper. It does not cover you for libel claims or for claims of invasion of privacy. It does not cover you for errors in advertising. It does not cover you for unauthorized use of a photo. It does not cover you for claims of copyright infringement.

Your agent is not used to dealing

with businesses in town with these specialized risks. They never think of the fact that you need these special kinds of coverage. They are familiar with their products, but don't realize that your needs are exactly the kinds that their policies do NOT cover.

Go pull your GL policy, take it home tonight and when you have a minute, look at that fine print. If it's there (and I guarantee it that it is, unless you have a special rider on your policy removing it), then perhaps it's time for a talk with your agent.

There are special policies to cover these risks. The National Newspaper Association has made them available to their members for years. Other carriers do have them and they are generally referred to as "publishing E&O coverage" (for "errors and omissions") or as "special perils coverage." If you have an agent that cannot find such coverage, give me a call and I'll help you with some potential sources.

This is not a column to tell you that you MUST have it. But it's just a shock when you think you have it and then discover you don't. Yes, it costs extra. I think any decision like that is a financial decision, and that should be up to you to make the cost/benefit analysis for your business.

Among the things you should look for in reviewing these specialty policies are not just the premiums but also the deductible. How the policies are designed – here we get into some technical issues: Some of the policies are "claims made" which means you buy coverage year by year for just

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claims made in that year. Those policies tend to be cheaper. The more expensive versions are the "occurrence" policies. You buy a year's worth of coverage, which you will find is more expensive, but for an occurrence policy, that year's coverage is for when you PUBLISHED the content. In other words, if you get sued at a later date for something you published this year, if you have "occurrence" coverage for this year, you are covered forever. Some policies allow you to select counsel of your choice, someone who understands these issues. Some policies require you to use their attorneys, and you

won't have any selection in who gets used.

It's up to you whether or not the cost for such coverage makes sense. Perhaps the cost is so high that you decide to forego coverage and just bite the bullet if and when you get sued. Sometimes a good lawyer can help extricate you from these situations and keep attorney fees reasonable. But I don't kid myself. Nobody ever thinks their attorneys' fees are reasonable, regardless!

Just make a point of looking to see if you have coverage and determine which situation is best for you. If we need to talk more, call me!



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