

Insurance

Torts Eric E. Johnson ericejohnson.com



Terminology ...

Insurance:

Insurance is an arrangement whereby some firm or agency guarantees compensation in the case of some specified loss or damage that is possible in the future — not because of fault, but because of the agreement to do so, generally in exchange for a payment called a premium.

Insurance coverage:

"[I]n the insurance context, coverage is defined as the '[i]nclusion of a risk under an insurance policy; the risks within the scope of an insurance policy." Southern-Owners Ins. Co. v. Easdon Rhodes & Assocs. LLC, 872 F.3d 1161, 1165 (11th Cir. 2017) (quoting Black's Law Dictionary, 10th ed.)

Some key things you should know about insurance:

- endorsements
- incentives
- regulation

What is an endorsement?

"[T]he meaning of the word "endorsement" in the insurance context is well-known ... 'a provision added to an insurance contract altering its scope or application[.]'"

Van Erden v. Sobczak, 271 Wis. 2d 163, 178 (2004) (quoting Webster's Third New International Dictionary)

Why care about endorsements?

- Contracts sometimes include an obligation to procure insurance from a third-party insurance company.
 - This might be part of a tort-liability risk management strategy.
 - For example, your client, a toy store, will only agree to sell a new toy if the manufacturer will put the toy store on its products liability insurance policy. As a result, the negotiated contract between the store and the manufacturer provides for this.
- Such a contractual obligation can be worthless if breached!
 - Consider that if your client just wanted the contracting party to cover a loss, the contract could have just provided for that. The benefit of an insurance policy is that there's a financially solvent third-party insurance company that can pay the claim.
- To protect the client's interest in getting the benefit of insurance, you must get the endorsement from the insurance company.

POLICY NUMBER: 10 CSE C 121E (ENUT. 67 THE HARTFORD
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY
ADDITIONAL INSUREDS - EMPLOYEES ENDORSEMENT
IT IS AGREED THAT THE "PERSONS INSURED" PROVISION IS AMENDED TO INCLUDE ANY EMPLOYEE OF THE NAMED INSURED WHILE ACTING WITHIN THE SCOPE OF HIS DUTIES AS SUCH.
THE INSURANCE AFFORDED BY THIS EMDOREMENT ALSO APPLIES TO ANY STUDENT OR STUDENT THE MALE WHILE ACTION AT THE DIRECTION OF THE NAMED INSURED AT THE NAMED INSURED AT THE NAMED INSURED AT THE NAMED INSURED AT THE NAMED INSURED.
This endorsement does not change the policy except as shown.
Form IH 12 01 11 85 Printed in U.S.A.

POLICY NUMBER: 10 CSE C. 121E

ENDT. #7



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY

ADDITIONAL INSUREDS - EMPLOYEES ENDORSEMENT

IT IS AGREED THAT THE "PERSONS INSURED" PROVISION IS AMENDED TO INCLUDE ANY EMPLOYEE OF THE NAMED INSURED WHILE ACTING WITHIN THE SCOPE OF HIS DUTIES AS SUCH.

THE INSURANCE AFFORDED BY THIS ENDORSEMENT ALSO APPLIES TO ANY STUDENT OR STUDENT TEACHER WHILE ACTING AT THE DIRECTION OF THE NAMED INSURED AT THE NAMED INSURED'S HEALTH CARE FACILITIES OR OTHERWISE ACTING ON BEHALF OF THE NAMED INSURED.

TG INTERNATIONAL INSURANCE BROKERAGE, INC. Policy GO-609

ENDORSEMENT #1

NAMED PERILS PROGRAM CERTIFICATE

The above referenced certificate is hereby endorsed to include the following:

TRANSIT CLAUSE: Coverage attaches from the time the goods leave the origin designated on the certificate for the commencement of the transit, and continues until the goods are delivered to consignee, consignee's residence, or other final warehouse or place of storage at the destination named on the certificate.

- (A) Insurance coverage terminates on the date/time shipment is accessed. (B) Insurance coverage terminates immediately if any of the insured property is released from the Through Bill of Lading Household Goods Carrier to named insured or their designated representative while shipment is enroute to destination.

 (C) Does not cover goods while in storage.

All other terms and conditions of coverage remain unchanged.

EFFECTIVE DATE OF THIS ENDORSEMENT IS: August 8, 2002

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF THE CERTIFICATE.

BROKER: TG INTERNATIONAL INSURANCE BROKERAGE, INC.

ADDRESS: 27352 CALLE ARROYO, SAN JUAN CAPISTRANO, CA U.S.A.

DATE OF ISSUANCE: August 8, 2002

AUTHORIZED SIGNATURE: Sandra & noonan

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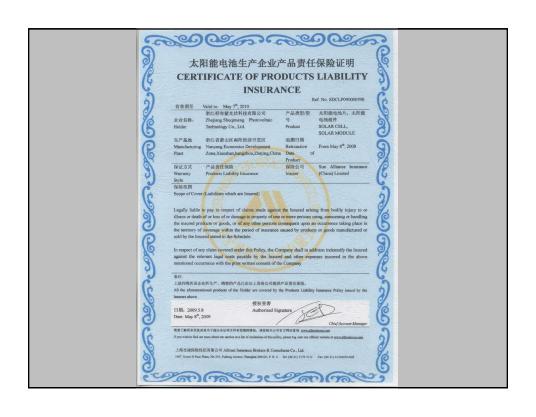
All other terms and conditions of coverage remain unchanged.

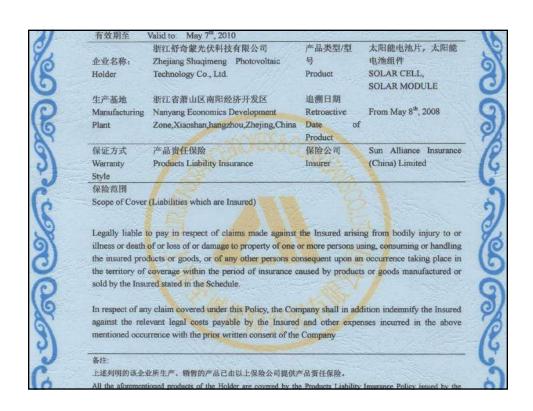
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About incentives ...

- There is generally an asymmetry of incentives and bargaining power between insurance companies and consumers.
- Insurance companies often have the bargaining power to set the terms of the policy.
- Insurance companies have incentive to
 - Sell more policies
 - Avoid paying claims
- Insurance companies can do this by being clever about "fine print" in the insurance policy and by dragging their feet on paying claims,

About incentives ...

- Insurance customers have the incentive to
 - Not buy insurance until they need it
 - Avoid seeming risky
 - Take less care when insured
- IOW, both sides have incentives:
 - to hide what they know
 - otherwise take the risk out of risk

About regulation ...

- Insurance is heavily regulated at state level
- Regulation limits "fine print" subversions of bargain by insurers
- Regulation may compel insurers to pay claims without litigation

About regulation ...

- Regulation may force customers to purchase insurance in order to:
 - Keep premiums affordable
 - (e.g., original Affordable Care Act's individual mandate)
 - Rationale: If only ultra-risky people buy insurance, premiums will be ultra high.
 - Provide a source of payment for third parties
 - (e.g., auto liability insurance)

Review question:

- Hexetron Mfg's sales contract with Geno's General Store obligates Hexetron to add Geno's to its products liability policy with IIG Insurance Co.
- Hexetron never follows through on this.
- Geno's incurs a huge products liability judgment. And now Hexetron is insolvent.
 Can Geno's recover from IIG?

Review question:

- Hexetron Mfg's sales contract with Geno's General Store obligates Hexetron to add Geno's to its products liability policy with IIG Insurance Co.
- Hexetron never follows through on this.
- Geno's incurs a huge products liability judgment. And now Hexetron is insolvent.
 Can Geno's recover from IIG?
- NO. Geno's should have gotten the endorsement! Without it, Geno's is not insured and gets no benefit of insurance.