

Insurance for Startups:

What do you need, and when?

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BUSINESS | EMPLOYMENT | LITIGATION

- Licensed Attorney & Insurance Agent in PA
- Specializing in business law & insurance

Presentation Outline

- Risk Management Basics
 - Core Concepts
 - Types of Insurance
- Case Studies
 - Treatspace
 - eCare Diary
 - RistCall



Core Concepts



Core Concepts

- All activities come with some level of risk
- Some risks are easy to assess, others are not
- Short term v. Long term
- Assessing risk in business often requires a pro
- Especially for startups with novel concepts

Core Concepts



Core Concepts

- How well you ID, assess, and manage risk will make a difference in your bottom line.
- Insurance is not a solution for every risk your business will face, and is very rarely the only solution.

Core Concepts



Core Concepts

Example:

- I am across a busy street from a Taco Bell. I want a Doritos Locos Taco, but to get it I have to walk through traffic.
- *What is the risk here?*



Core Concepts

- Acceptance: I cross the road w/o looking
 - Pro: Requires the least amount of resources.
 - Con: Greatest chance I could be hit by a car.

- Avoidance: I don't walk across the street
 - Pro: Least risk. Little to no chance of being hit by a car. Least resources expended.
 - Con: No chance at reward. No taco.

Core Concepts

- Reduction: I cross, but look both ways first
 - Pro: I reduce the risk that I am hit and increase the likelihood I get the taco.
 - Con: I expend resources and still accept some risk.
- Transfer: I pay someone \$5 to get it for me
 - Pro: I eliminate risk of being hit
 - Con: I expend resources and create new risks.

Core Concepts

Insurance = Risk Transfer

- In doing business, you risk financial loss
 - Loss of your property
 - Loss of other's that you cause
- An insurance policy transfers that risk
 - Insurance company takes on specific financial risks for you that are spelled out in your policy

Core Concepts

Other Types of Risk Transfer

- Contractual Agreements
 - Agreements with individuals or businesses that they will assume the risk of a certain joint activity
 - Ex. Sub-contractors in construction
- Terms of Use Agreements
 - Limit liability for injury caused by misuse of product
 - Ex. Standing on ladder shelf

Core Concepts

Most Risks Addressed with Two Step Approach



Core Concepts

- If I run a Taco Bell, there is a risk that someone could get sick from unsanitary food



Core Concepts

Options

- Acceptance: Let employees lick tacos
- Avoidance: Stop serving tacos
- Mitigation: Supervise employees
- Transfer: Let employees lick tacos, buy insurance policy to cover customer illness

Core Concepts

Best Answer

- Supervise employees & buy insurance
 - Reduces likelihood of customer getting sick
 - Protects you in case it happens



Coverage Types

- All insurance falls into two basic categories
 - Property
 - Liability

Exception:
Worker's Comp



Coverage Types

- **Liability:** Another person or business's loss that you are responsible for
 - Responsibility can be legal or contractual
- **Property:** Loss of asset that belongs to you
 - Can be tangible, real, or intellectual property
 - Also includes things like business income

Coverage Types

Commercial General Liability

- Most common form of business coverage
- Three basic coverages under GL policy
 - Premises liability
 - Products liability
 - Personal & Advertising liability
- Will pay for legal defense as well as any judgment or settlement up to limit.

Coverage Types

Commercial Property

- Buildings, equipment, stock, income, etc...
- Property insured at Replacement Cost or Actual Cash Value
- Cannot insure something for more than it is worth or would cost to replace
- Only certain causes of loss are covered

Coverage Types

Commercial Auto

- Coverage for driving risks
- Typically only necessary for businesses that require driving during work
- Can get coverage for vehicles owned by company, as well as vehicles owned by employees while being used for work

Coverage Types

Professional Liability / Errors & Omissions

- Liability for services/advice you provide as a professional
 - i.e. Malpractice liability for doctors or lawyers.
 - Available for a variety of industries from beauticians to engineers
 - Can cover contractual injury from failure to perform in certain circumstances

Coverage Types

Other Types of Liability Insurance

- Directors & Officers Liability
 - Coverage for corporate officers for lawsuits brought for alleged wrongful acts related to their position
 - Can be liable to shareholders or to outside interests
- Cyber Liability
 - Liability for theft of customers' personal information
 - Liability for publishing electronic media

Types of Coverage

Worker's Compensation

- No fault coverage for injuries to employees
- Required for all W-2 employees
 - Not for Owners, Partners, Directors & Officers, and Independent Contractors
 - Can be tricky to determine if employee or contractor
- State will fine you for not having coverage if you have employees

Coverage Types

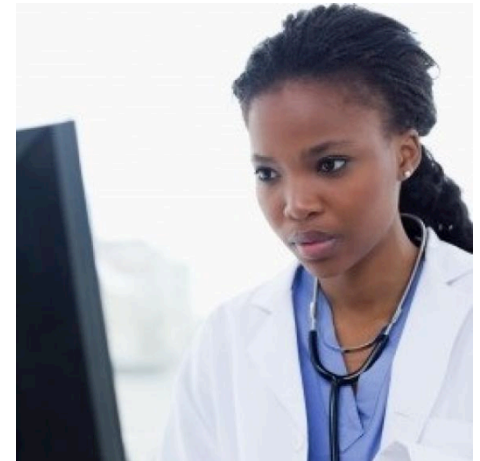
Wrap Up

- **Liability: Loss suffered by others you cause**
 - Bodily injury, property damage, financial loss
 - Insurance can cover depending on circumstances
- **Property: Loss suffered by you**
 - Property damage, financial loss
 - Insurance can cover depending on what the property is and what causes the loss

Case Study:



- Cloud based management for doctors
 - Practice Management
 - Secure communication for referrals to other docs
 - Secure communication w/patients
 - HIPAA compliance
 - Practice Visibility
 - SEO
 - Web Development



Case Study:



- Roots in Project Olympus
- C-Corporation, Delaware
- Founders & some W2 employees w/equity
- Outside investment
 - Angel Investment
 - Institutional investment
- Rent office space in East Liberty
- Advertise on a website & social media

Case Study:



- GL Risk: Premises
 - Minor concern for this business, but does exist
 - Almost all landlords will require you to have GL

- GL Risk: Advertising
 - Website advertises services
 - Fairly incidental to operations
 - Could be covered by GL, but probably excluded

Cast Study:



- **Property Risk: Business Property**
 - Computers, etc...
 - Fairly minimal exposure in this situation
 - Minimal if any coverage required
- **Auto Risk: None**
 - No one doing any extensive driving in connection with work
 - No owned autos
- **Workers Comp: Needed for employees**

Case Study:



Major Exposures

- Transmitting Personal Data:
 - Facilitating the transfer of privileged medical information from Doctor to Doctor, and from Doctor to Patient
 - Governed by HIPAA
 - Data Breach excluded in GL policy

Case Study:



Solutions

- **Transfer:** Data Breach Insurance
- **Transfer:** Indemnification Agreements
- **Mitigation:** Strong cyber security measures

Case Study:



Major Exposures

- Advice and Service of Doctors
 - Advising on HIPAA compliance
 - Can be liable if incorrect about rules
 - Tech service
 - Can be liable for doctor's loss if you fail to deliver proper service due to a professional error
- **Solution:** *Professional Liability Coverage*

Case Study:



Solutions

- **Transfer**: Professional Liability Coverage
- **Mitigation**: Frequent refresher courses on the HIPPA Law

Case Study:



Major Exposures

- Outside Investors
 - Corporate officers are liable for managerial decisions that have adverse financial consequences.
 - Errors can be based on law or corporate bylaws
- **Solution: D&O Coverage**
 - Protects officers for claims against them personally
 - Protects company as a whole from securities issues

Case Study:



Wrap Up

- **GL:** Some exposure, need insurance
- **Property:** Use discretion on insurance
- **Auto:** Minimal risk, insurance not needed
- **Data Breach:** Main risk, need insurance
- **Prof. Liability:** Main risk, need insurance
- **D&O Liability:** Main risk, need insurance
- **Work Comp:** Required for Employees

Case Study:



- Web service providing support tools for people caring for family members with chronic illnesses, like Parkinson's or MS
 - Publishes articles relating to various issues related for caregiving, from financial to health
 - Provides a message board for caregivers to communicate with one another
 - Users create a diary about patient's condition that can be accessed by family members and doctors

Case Study:



- Rents office space in East Liberty
- S-Corp structure
 - Closely held by owners
- Owners & independent contractors working
- Publishes and maintains website



Case Study:



- GL Risk: Premises
 - Minor concern for this business, but does exist
 - Almost all landlords will require you to have GL
- GL Risk: Personal & Advertising
 - **Major Exposure for this business**
 - Web publishing is a main function of this business
 - Carries risk of libel, defamation, and infringement on the intellectual property of others
 - **Excluded under GL policy**

Case Study:



- Property Risk: Business Property
 - Some computers and other office equipment
- Auto Risk: None
 - No owned autos
 - Little driving on company time
- Worker's Compensation: None
 - Not required for independent contractors
- D&O Risk: Closely held company, not required

Case Study:



Major Exposures

- Publishing Articles
 - Risk of defamation against person or products
 - Risk of liability if article gives bad advice
- Hosting message board
 - Risk of being brought in on a lawsuit if someone else posts defamatory or libelous material

Case Study:



Solutions

- **Transfer**: Cyber Media Liability Coverage
- **Transfer**: Terms of Use for Message Board
- **Mitigation**: Be careful about what you publish
- **Mitigation**: Monitor message board

Case Study:



Major Exposures

- Accepting and keeping private data
 - Can be held liable if private info were exposed
 - HIPAA does not apply, but can be liable anyway if information infringes on a person's right to privacy and/or causes embarrassment.
- **Solution:** *Data Breach Coverage & Cyber security.*

Case Study:



Wrap Up

- **GL:** Some premises exposure, major exposure excluded, need insurance for both
- **Property:** Use discretion on insurance.
- **Auto:** Minimal risk, insurance not needed
- **D&O:** Minimal risk, insurance not needed
- **Electronic Media:** Main risk, need coverage
- **Data Breach:** Main risk, need insurance

Case Study:



- Markets wristwatch like device for patients to call nurses with in hospitals
- Product alerts nurses of patient need, continues alert until a nurse picks up
- Hospitals lease equipment from ristcall, service provided by ristcall

Case Study:



- Currently formed as an LLC
 - Will convert to C-Corp when ready to raise capital
- No rented office space
- No W-2 employees
- Applying for Patent
- Purchasing existing product and repurposing



Case Study:



- GL Risk: Premises
 - Company does not have a space rented yet, no exposure until this occurs
- GL Risk: Advertising
 - Very minor exposure at this point.
- Auto Risk: Minimal
- Worker's Comp: No employees, no risk
- D&O: Not needed until conversion to C-Corp and significant outside investment occurs

Case Study:



Major Exposure



- Products Liability

- Injury caused by malfunction of the device
- Significant risk in hospital setting
- **Transfer:** GL or stand alone product liability policy
- **Transfer:** Indemnification agreement in service contracts

Case Study:



Major Exposures

- Physical Property
 - Devices themselves are owned by company
 - Business income dependant on devices functioning
 - **Solution:** Property coverage for devices, BI coverage
- Intellectual Property
 - Patent infringement on your idea
 - Someone else saying you infringed on their idea
 - **Solution:** IP Insurance

Case Study:



Wrap Up

- **GL: Products are main risk.** Need coverage when product testing w/patients begins
- **Property: Significant risk.** Need coverage for device when a significant number of them are obtained by company. Need income coverage when device goes into use.

Case Study:

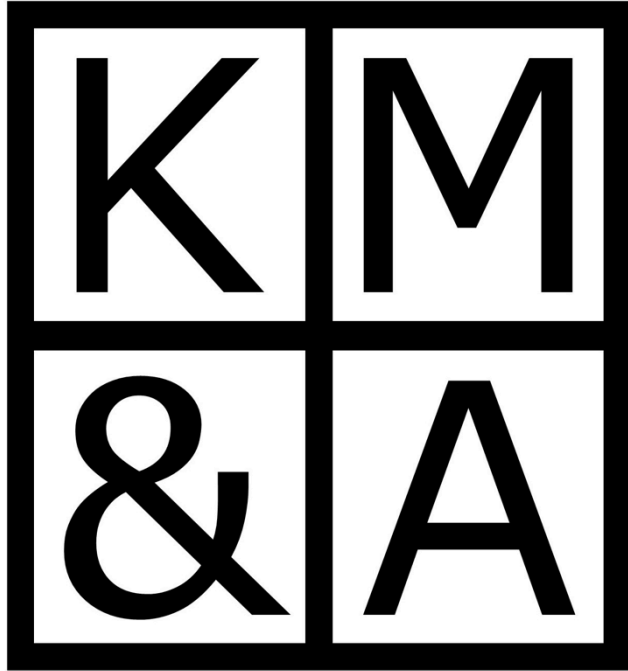


- Auto: No risk yet. Not likely to become significant
- D&O: Should consider after transition to C-Corp when outside investment comes in
- Work Comp: When employees are hired
- IP Policy: Consider if significant production occurs prior to patent issue.

Take Aways

- Every business presents certain risks
- Some risks are easy to see, others are not
- Insurance is one tool of many to address risk
- Make sure your business's policy covers the the main risk that your business faces

Thank you!



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