Insurance for Startups:

What do you need, and when?

Disclaimer: The following information is being provided for educational purposes only. The information contained is not exhaustive, and is not meant to constitute legal or insurance advice, or create any relationship between the presenter and the viewer.
- 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

- Accept
- Avoid
- Reduce
- Transfer
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
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: Care Diary

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: ristcall

**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
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 main risk that your business faces
Thank you!

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