

# Broker Insight Report 2017:

How Insurance Oversights  
Can Lead to Devastating  
Claims Denials



**HUB**

| Business Insurance

#LetsDoSomething

# Contents

Executive Summary	1
Big Risk #1	3
Big Risk #2	4
Big Risk #3	5
Chapter 1: D&O Liability	8
Chapter 2: EP Liability	12
Chapter 3: Cyber Risk	16
Chapter 4: Professional Liability	20
Chapter 5: Business Interruption Coverage	25

## Executive Summary

As a business owner or leader, you know the unpredictability of your market. You've learned to make decisions and take risks amid political, economic and regulatory uncertainty. You've weathered it all and steered your business confidently through contractions and expansions.

But the winds of change have never blown stronger than they are now.

Since we launched our first Broker Insight Report in the fall of 2016, the business climate has grown far more volatile. In response, we've expanded our Broker Insight series to bring you a greater understanding of current exposures, how your coverage needs change throughout the business lifecycle, and how your HUB broker can be your best advocate through it all.

### WHEN TEMPORARY BECOMES PERMANENT

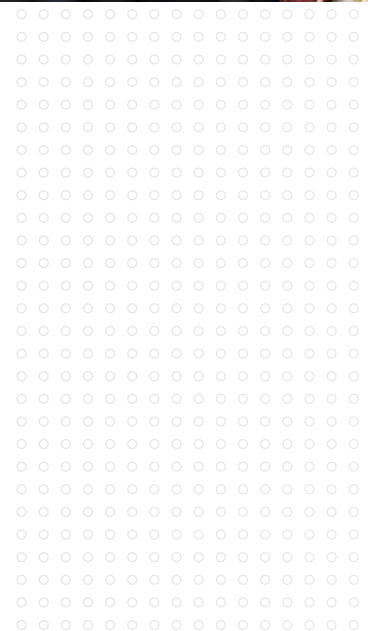
Because the risk of business disruption — caused by cyber incidents, supply chain disruption, employment or management liability issues or a catastrophic event — has increased, the frequency and cost of claims against businesses are rising faster than the rate of inflation.

What hasn't changed is that up to 60 percent of small- to mid-size businesses still close their doors permanently following such a major business crisis.

Clearly, you need a plan. But not just any plan: one that considers where you are today, and where you're going. One that anticipates your business risks and milestones. And one that continues to look out for you even *after* you purchase the right coverage.

Behind that plan, you need a broker who understands the real world of business and will advocate for your real-world needs. Someone who can ask the carrier to overlook an unprecedented loss, urge carriers to take your side when it comes time to settle a claim or a lawsuit, or get you an exception based on your unique circumstances.

**HUB can help.**



# Getting the right coverage starts with finding the right broker

So how do you recognize the *right* broker? Look for an expert who will:

## SUPPORT YOU WHEN YOU ENCOUNTER NEW RISKS

As your business grows and evolves, you'll encounter new risks related to everything from introducing a new product to losing a major customer. A HUB broker will carefully evaluate all relevant policies and procedures and guide your reporting. They'll also spot any coverage gaps and work to minimize exclusions.

**What risks should you anticipate? Find out.** Read HUB's eBook, *Own Your Business Risk: The Insurance You Need to Make Bold Moves*.

## PRESENT YOU AS A GOOD RISK TO CARRIERS

Many HUB brokers are former underwriters who will actually pre-underwrite for you, explaining your current risks, detailing the work being done to mitigate them, and positioning you as a good risk — even if you've been hard to insure in the past.

**How does it work? Learn more.** Read HUB's article, *Before You Buy Insurance, You Have to Sell Yourself as a Good Risk*.

## NEGOTIATE FAVORABLE TERMS ON YOUR BEHALF

In every professional policy, there are negotiable exceptions — for brokers with influence. Leveraging a vast network of carriers and close underwriter relationships, a HUB broker can negotiate coverage limits, enable you to select favorable counsel, and even influence the final settlement, should a claim arise.

**What else do you need to consider? Go deeper.** Read HUB's eBook, *Best Practices for Successfully Navigating the Claims Process*.

## THE COVERAGE YOU NEED FOR THE RISK YOU'LL FACE

Working together, we can build a comprehensive risk strategy that addresses the three key risks today's business leaders face:

- Third-party exposures
- Coverage gaps
- Regulatory oversight

**Let's take a closer look at each.**



## Big Risk #1

### THIRD-PARTY EXPOSURES CREATE NEW LIABILITIES

Trust yourself, not necessarily your partners or vendors. Public, private and nonprofit organizations alike significantly underestimate their third-party exposures. In fact, many don't even evaluate their vendor partners until after liability has occurred.

Are you doing everything you can to minimize your risk? What about everyone else in your business network? You face third-party exposures due to relationships with:

- Business partners
- Vendors
- Clients
- Suppliers
- Competitors
- Creditors
- Newly acquired companies
- Private and public investors
- Shareholders

### DID YOU KNOW?

As many as

**57%**

of businesses only evaluate their vendors after engagement — likely after liability has occurred.<sup>1</sup>

<sup>1</sup> NAVEX Global's 2016 Ethics & Compliance Third Party Risk Management Benchmark Report



## Big Risk #2

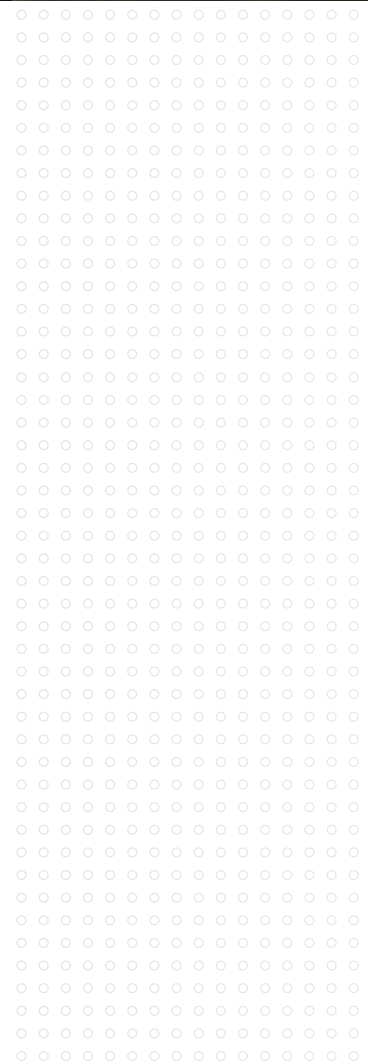
### GAPS IN COVERAGE LEAD TO CLAIMS DENIALS

Without liability policies tailored to your organization's specific risks, coverage gaps and exclusions are likely to surface, and can easily lead to a claims denial. Policies must be built to complement one another, not simply bought off the shelf.

Without comprehensive coverage, a claim can cripple a small- to mid-size business, due to:

- Defense costs
- Business disruption

Because business insurance lacks standard policy language and terms, your policies must be written to fit together like puzzle pieces to effectively eliminate coverage gaps.





## Big Risk #3

### REGULATORY OVERSIGHT CAN TRIGGER MORE RISK

Regulatory oversight affects all businesses, regardless of size or industry. There are myriad federal and state entities overseeing many aspects of your business — healthcare, employee benefits, cyber security and employee safety, to name just a few — and regulatory action can lead to:

- Class action lawsuits
- Hefty fines, penalties and sanctions
- Claims that cross coverage lines
- Damage to your reputation

As the political winds blow, new regulations are created and existing ones eliminated. Unless you're able to keep pace with every change, you could experience increased liability without even knowing it.

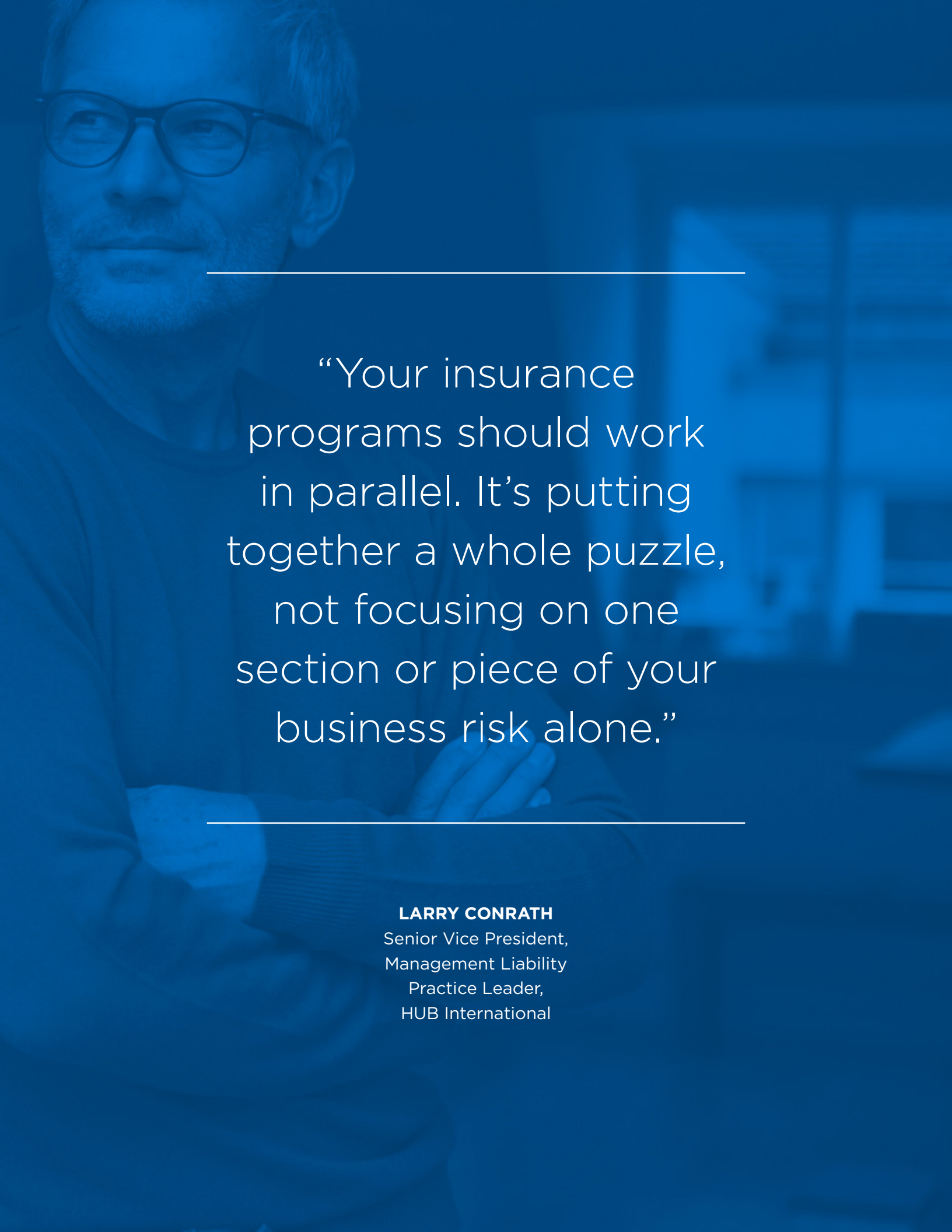
### DID YOU KNOW?

Since 2008, the U.S. government has imposed

**\$733.9 BILLION**

in regulatory costs on private businesses. For every 10% increase in regulatory costs in an industry, the number of small- and medium-size businesses in that industry falls 3%–6%.<sup>2</sup>

<sup>2</sup> American Action Forum. <https://www.americanactionforum.org/research/regulatory-impact-on-small-business-establishments/>



---

“Your insurance programs should work in parallel. It’s putting together a whole puzzle, not focusing on one section or piece of your business risk alone.”

---

**LARRY CONRATH**

Senior Vice President,  
Management Liability  
Practice Leader,  
HUB International

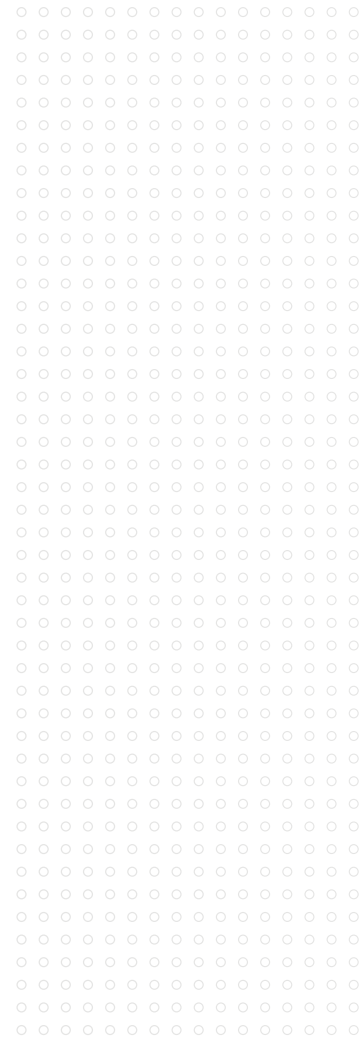
## Putting together the puzzle

This Broker Insight Report highlights the real business liability risks that growing organizations like yours are facing — and explains the integrated coverage you need to mitigate those risks.

Take the first step toward building a truly robust management liability portfolio today. Read on to gain a detailed understanding of the individual coverages you'll need, the claims most commonly associated with them, and which potential claims denials to be aware of. Learn why your business liability policies must fit together like pieces of a puzzle built with your specific risks and exposures in mind.

In the following pages, we'll take a close look at the following management liability policies:

- Directors and Officers (D&O) Liability
- Employment Practices Liability (EPL)
- Cyber Risk
- Professional Liability
- Business Interruption Coverage





## CHAPTER 1: DIRECTORS AND OFFICERS (D&O) LIABILITY

Every public, private and nonprofit organization needs to be protected from within.

It may be hard to believe, but when you take on an executive role, you are putting your personal assets on the line. At the same time, your employer is taking a chance by putting you in charge of its daily operations, financial decisions and the overall future direction of the organization. A Directors and Officers (D&O) Liability policy will protect both you and your organization from the consequences of the decisions you make as an executive. Think of it as corporate and personal asset protection.

If a claim is brought as a result of a corporate decision you make, your D&O policy will kick in. Without one, you could lose the business *and* your personal assets. Your house, your cars, your child's college savings plan, your 401(k) and any other investments could be placed in jeopardy.

With the recent rise in D&O claims, many organizations that previously did business without this coverage are now seriously considering it.



### DID YOU KNOW?

As many as

**31%**

of businesses reported claims against their D&O liability policies in the last

**5 YEARS,**

with nonprofits reporting the highest proportion of claims at 58%.<sup>3</sup>

A breakdown of claims experience by private companies shows that:<sup>4</sup>

**46%** were shareholder lawsuits

**33%** were customer lawsuits

**21%** were vendor lawsuits



<sup>3</sup> Advisen Ltd. 2016. Advisen's Master Significant Cases & Actions database (MCSAd)

<sup>4</sup> Advisen, Ltd. The Private Eye — A Spotlight on the US Private D&O Market (August 2013)

## A Few FAQs about D&O Policies

### Q: WHOM DOES A D&O POLICY COVER?

**A:** A D&O policy protects current, past and present directors, officers and employees if they're named in a lawsuit that is either brought against them specifically, or brought against the company, including any regulatory exposure.

### Q: WHAT'S THE DIFFERENCE BETWEEN A D&O AND A PROFESSIONAL LIABILITY POLICY?

**A:** While a professional liability (also known as errors and omissions or E&O) policy covers you when a *client* sues for negligence relating to a professional service, a D&O policy covers exposures from internal corporate decisions, including lawsuits brought by creditors, vendors, suppliers, investors and competitors, state and federal regulators and shareholders.

### Q: ISN'T D&O INSURANCE JUST FOR PUBLIC COMPANIES?

**A:** For public companies, direct shareholder or investor suits and derivative suits are leading causes of D&O claims.<sup>5</sup> Privately owned companies don't face the same risk, but still need D&O insurance to protect them in the relationships they have with creditors, vendors, suppliers, competitors and regulators.

### "IF MY COMPANY IS PRIVATELY HELD, I MIGHT LOOK AT MY OWNERSHIP AND SAY, 'I DON'T EVEN HAVE PEOPLE ON A BOARD, OR SHAREHOLDERS, SO WHY DO I NEED D&O?'"

"The D&O policy should really be called Personal and Corporate Asset Protection — and that's something everyone needs. A privately held company or a nonprofit, even without multiple shareholders, has to deal with creditors, vendors and business partners. If the organization goes into financial distress or bankruptcy, their vendors, suppliers, landlords and others will all be considered creditors. And all organizations deal with state, federal and local regulatory bodies that can investigate alleged improper conduct."

#### ADRIAN ATILANO

Executive Vice President,  
Executive Liability Practice Leader,  
HUB International

<sup>5</sup> 2015 JLT Specialty US Directors and Officers Liability, p. 29, Fig. 31

# Top Five D&O Claims Denials

Even when you have D&O insurance with adequate limits, there are a number of reasons your claim could be denied. Here are the top five:

## 1. LACK OF ANTITRUST OR UNFAIR TRADE COVERAGE

A standard D&O policy may not cover your company for many common claims brought by your competitors or regulators.

According to HUB's Management Liability Practice Leader and Senior Vice President Larry Conrath, "What you might think is a typical business-to-business claim may not actually be covered by your D&O policy. Understanding the potential impact of your exclusions, particularly for antitrust or unfair trade practices, is best done by walking through scenarios with your broker."

## 2. OVERLY BROAD EXCLUSIONS

You should closely examine potential exclusions in your D&O insurance to make sure that coverage for your key areas of risk overlaps and doesn't potentially exclude a core part of your business.

## 3. OVERLY BROAD CONDUCT EXCLUSIONS FOR CRIMINAL ACTS/ILLEGAL PROFITS

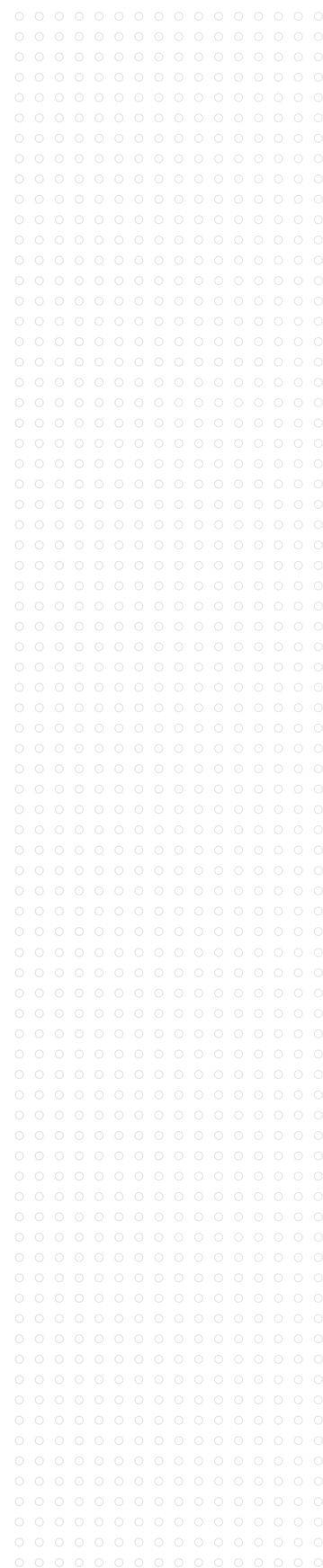
Most D&O policies will contain personal conduct exclusions for actions relating to illegal profit, fraud and/or deliberate criminal acts by directors and officers. While there may have been no such activity on your part, many suits allege such claims, and the policy must be properly worded to ensure you are afforded sufficient coverage to defend yourself.

## 4. COVERAGE EXCLUSION FOR CERTAIN REPRESENTATIVES OF YOUR BUSINESS

If a former company insider brings a lawsuit against you, the lawsuit could be excluded. Check your policy. It's important to closely analyze these exclusions to ensure they are not too restrictive or too favorable to the insurance carrier.

## 5. LATE REPORTING

Failure to report a claim in a timely manner could cause it to be denied. Though easy to avoid, this is one of the most common reasons for coverage denials. Your insurer will likely have an obligation to defend you, but will also require adherence to certain guidelines in order to maintain the defense. Make sure you understand your obligations to report claims and what role your insurer will play in the process.



## Real D&O Claims Stories

### UNINTENTIONAL BREACH OF CONTRACT LEADS TO D&O CLAIM FOR NONPROFIT ORGANIZATION

An inner-city, nonprofit organization that aims to help teens stay off the streets contracted a food truck for its annual picnic. Unfortunately, the organization was forced to cancel the picnic less than 24 hours before it was scheduled to begin. While there was no cancellation clause in the contract, the food truck owner sued the nonprofit for the cost of food and paper goods already purchased, along with employee salaries. The nonprofit's D&O policy covered the costs to defend the suit.

### LACK OF SUCCESSION PLANNING LEADS TO A D&O CLAIM AGAINST A PRIVATE COMPANY'S BOARD OF DIRECTORS

When the head of a private shipping supply manufacturer passed away unexpectedly, it was left to the board of directors to choose a successor. Unfortunately, the person they chose promptly drove the business into the ground. A relative of the original leader sued the board for negligence in business succession planning. The company's D&O policy protected the board members and paid for their defense.

### EXECUTIVE OF A PUBLICLY OWNED TOY COMPANY IS INDEMNIFIED BY THE BUSINESS'S D&O POLICY

A toy company on the verge of bankruptcy couldn't afford to pay its biggest creditor. Because the company lacked the capital to pay, the creditor went after the company's CEO. The CEO asked the company to pay his defense costs, but the company couldn't — it no longer had the capital. Instead, the CEO made a claim on the company's D&O policy, which responded, provided a defense and indemnified him.





## CHAPTER 2: EMPLOYMENT PRACTICES LIABILITY (EPL)

Playing by the book doesn't always mean you're in the clear: a lesson in EPL claims.

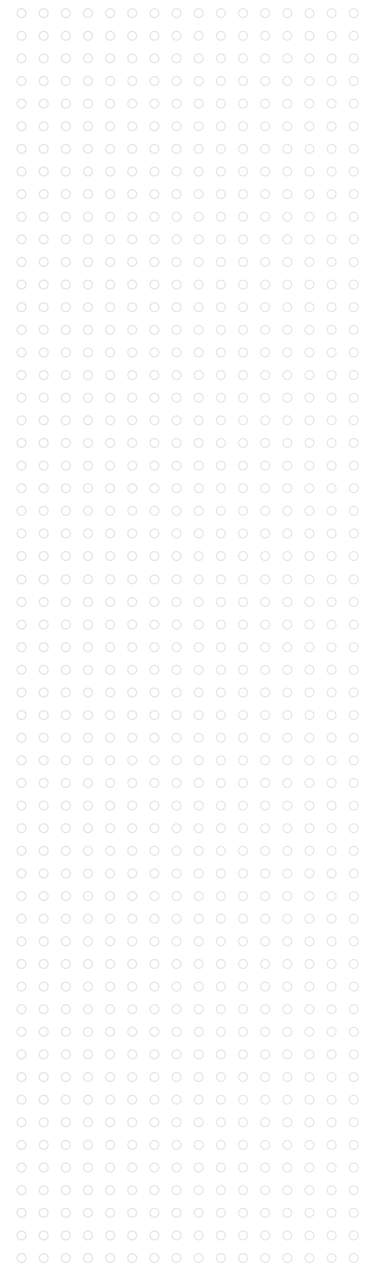
There are many reasons an employee might bring an Employment Practices Liability (EPL) claim against you or your company. From discrimination to retaliatory discharge, companies with 100 or more employees can expect an employment liability claim every three years.<sup>6</sup>

The problem is, even if you believe you are doing everything by the book, you can still end up on the hook for a costly lawsuit. Defending an EPL claim can easily take a year's time, consume huge amounts of money and resources, and distract you from normal business operations — putting your career, reputation, balance sheet and workflow all in jeopardy.

“Businesses cannot survive without adequate employment liability insurance. No one is immune from this type of litigation today. Risk managers and HR executives often ask us, ‘Why should I fear litigation if I’ve done nothing wrong?’ Unfortunately, this reasoning doesn’t apply today. Smaller organizations are particularly at risk due to their limited resources.”

### CHRISTINE PECHA

JD, Senior Client Advocate,  
Vice President, Management, Employment,  
Cyber & Professional Liability Claims,  
HUB International



<sup>6</sup> Westlaw, 2012-2013 Edition of Jury Award Trends and Statistics

## The Statistics Are Not in Your Favor

Employees have a 51 percent chance of winning an EPL lawsuit, and even when an employer prevails, it's often at great cost.<sup>7</sup> Legal expenses, such as eDiscovery, have introduced a significant financial burden to the business and its balance sheet.

### COMMON DISCRIMINATION CLAIMS

Normal employment-related activities such as hiring, terminating and promoting employees all carry liability exposure. The most common allegations in employment claims are:

- Disability (related to the Americans with Disabilities Act [ADA]), age, race and gender discrimination
- Termination for retaliatory reasons
- Violation of Family and Medical Leave Act (FMLA) rights

### DID YOU KNOW?

**51%**

of EPL lawsuits are won by employees or other plaintiffs.<sup>8</sup>

The median EPL judgment is

**\$200,000,**

not including defense costs.<sup>9</sup>

25% of EPL cases result in judgments of

**\$500,000**

or more.<sup>10</sup>

<sup>7</sup> U.S. Department of Labor. [insurancejournal.com/magazines/features/2014/01/13/316347.htm](http://insurancejournal.com/magazines/features/2014/01/13/316347.htm)

<sup>8</sup> Ibid.

<sup>9</sup> 2015 Hiscox Employee Lawsuit Handbook — Employment Practices Liability: Jury Award Trends and Statistics 2013 Edition, Thompson Reuters

<sup>10</sup> Ibid.

## EPL Misconceptions vs. Reality

Until recently, only about 30 percent of privately held companies purchased EPL coverage,<sup>11</sup> but that number is rising fast as companies learn the truth about how exposed they really are.

### MISCONCEPTION #1: MY GENERAL LIABILITY POLICY COVERS EMPLOYMENT LIABILITY CLAIMS.

**Reality:** A general liability policy is not a master liability policy. Rather, it applies only to bodily and advertising injury and property damage. Without employment liability insurance, an employer will be left to defend costly employment claims on its own.

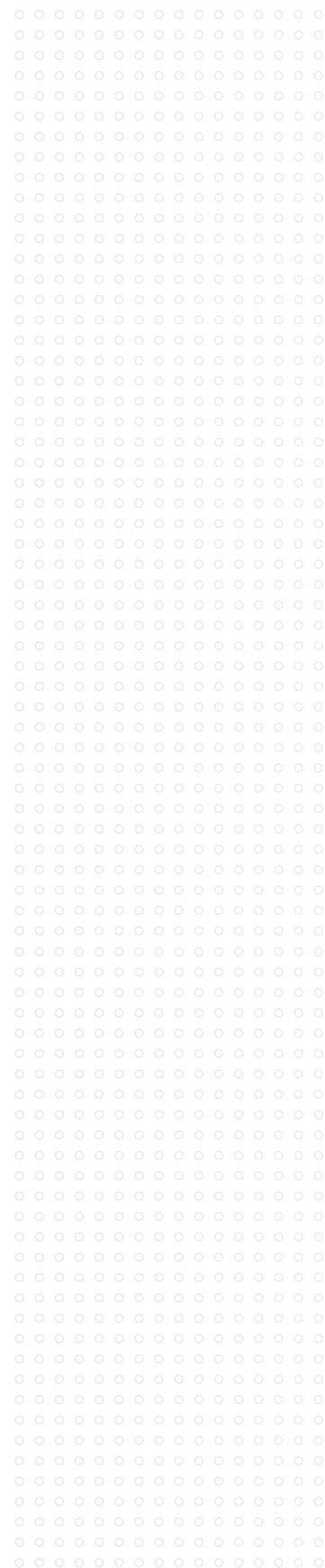
### MISCONCEPTION #2: I HAVE A GREAT RELATIONSHIP WITH MY EMPLOYEES. I DON'T HAVE AN EMPLOYMENT LIABILITY RISK.

**Reality:** You may indeed know your employees very well. Regardless, for 2015 the Equal Employment Opportunity Commission (EEOC) reported the filing of close to 90,000 employment claims. At the same time, there has been an increase in disability and age discrimination claims, and monetary recoveries for employees by the EEOC have risen significantly, to \$420 million.

All it takes is one employee complaint to raise the red flag to a regulatory agency such as the EEOC, which can create a second, larger class action lawsuit from even the smallest EPL claim. EPL insurance covers claims against any employees and customers — including the ones you have a great relationship with.

### MISCONCEPTION #3: AS LONG AS I DID NOTHING WRONG, I DON'T NEED TO WORRY ABOUT AN EPL CLAIM.

**Reality:** It almost doesn't matter if you're innocent. The average EPL claim takes just under a full year to resolve and can bring with it outrageous, untruthful, reputation-damaging accusations against your leadership, employees and management. While settlements can minimize exposure, the financial loss to your business will still be significant. EPL insurance can help resolve a claim efficiently and minimize the financial impact to your organization.



<sup>11</sup> Chubb's 2013 Private Company Survey. <http://www.insurancejournal.com/magazines/features/2014/01/13/316347.htm>

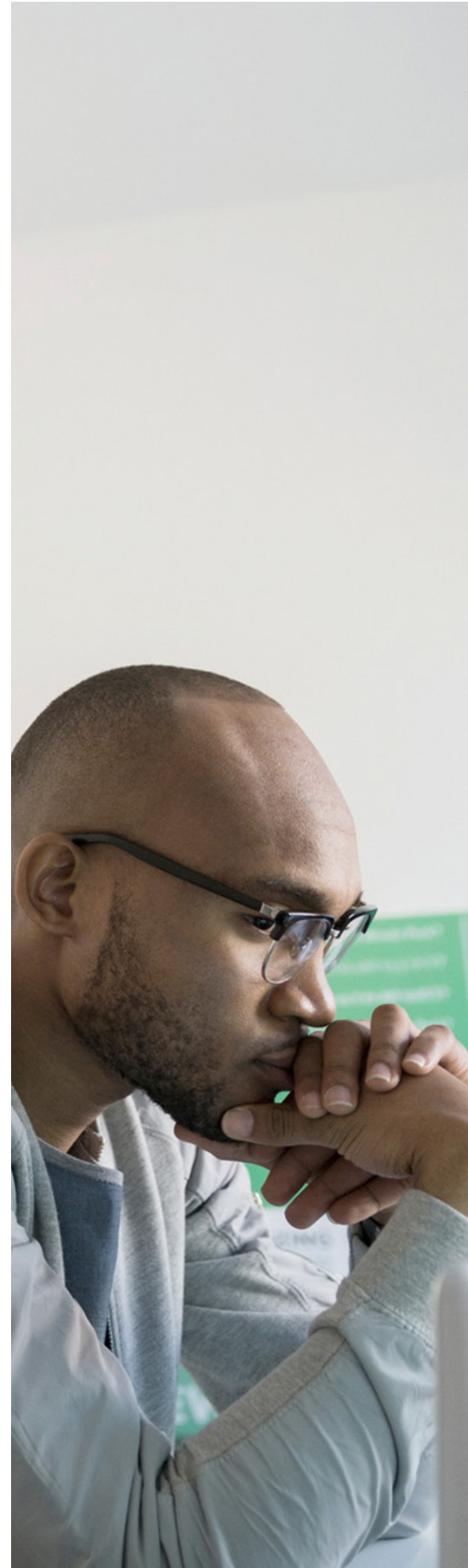
## Real EPL Claims Stories

### ONE ORGANIZATION'S NIGHTMARE: FROM A SMALL EMPLOYMENT CLAIM TO A \$1 MILLION CLASS ACTION LAWSUIT

A disgruntled worker brought a wrongful termination claim against his previous employer — a small organization with a diverse employee base — alleging the action was related to his ethnicity. In the process of interviewing other staff members to assess the validity of the individual's claim, the EEOC determined there was enough evidence to expand the claim into a class action involving several hundred current employees. What could have been a small settlement escalated into a \$1 million claim. Had it not been for its EPL insurance and adequate policy limits, the organization would have had to finance the settlement on its own, which would have had a devastating effect on the donor base upon which it relies.

### FAILED BACKGROUND CHECK PUTS FIRM AT RISK

Although the commercial real estate firm hiring him performed a background check, it somehow missed the fact that a new employee was a convicted sex offender. When the firm's HR department found out, they terminated him immediately. Unfortunately, the company had not purchased EPL insurance, and without it, any harassment claim from co-workers will be the firm's financial responsibility.





## CHAPTER 3: CYBER RISK

Cyber attacks are the #1 emerging business risk.

You should never underestimate the potentially crippling effects of a cyber breach, or assume that your company is too small, too big or too protected to become a target. In fact, small- to mid-size businesses (SMBs) are the target of 87 percent of all data breaches today.<sup>12</sup> The resulting compliance requirements and business interruption can be devastating, because SMBs are simply not equipped to survive such an event.

Shocking as it may seem, the source of a breach is often close to home. In fact, 13 percent of all cyber breaches are caused by the type of third-party vendors<sup>14</sup> you work with on a daily basis — your business partner, supplier or advisor. Sharing access to your network, even on a limited basis, and even with those you trust, opens you up to a potential cyber breach.

You may be putting your customer and employee data and intellectual capital at risk if you provide network access to any of the following partners:

- Payroll processing company
- Internet/cloud/phone service provider
- HVAC vendor
- Product supplier
- Inventory management firm
- Customer service provider

Thirty percent of breaches are caused by insiders,<sup>15</sup> whether inadvertently by human error or actively by a rogue employee. Have you trained your employees on how to respond to social engineering, spear phishing and ransomware attacks? Ninety-one percent of successful data breaches started with spear phishing attacks.<sup>16</sup>

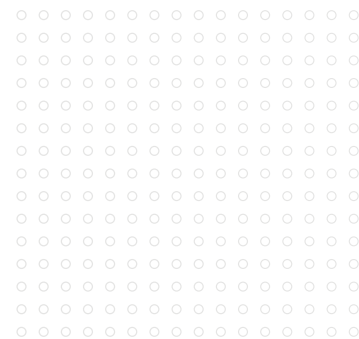
<sup>12</sup> Staysafeonline.org

<sup>13</sup> Ibid.

<sup>14</sup> Net Diligence 2015 Cyber Claims study

<sup>15</sup> Ibid.

<sup>16</sup> Trend Micro. <http://www.infosecurity-magazine.com/news/91-of-apt-attacks-start-with-a-spear-phishing/>

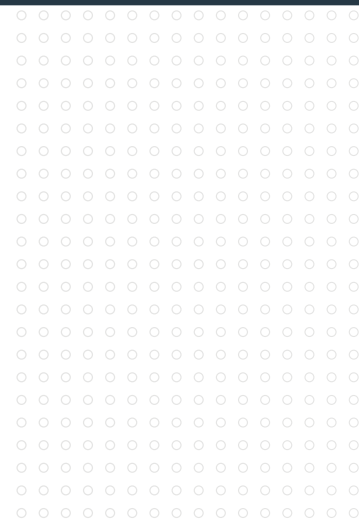


### DID YOU KNOW?

As many as

**60% OF SMBs**

close their doors after a data breach, never to reopen.<sup>13</sup>



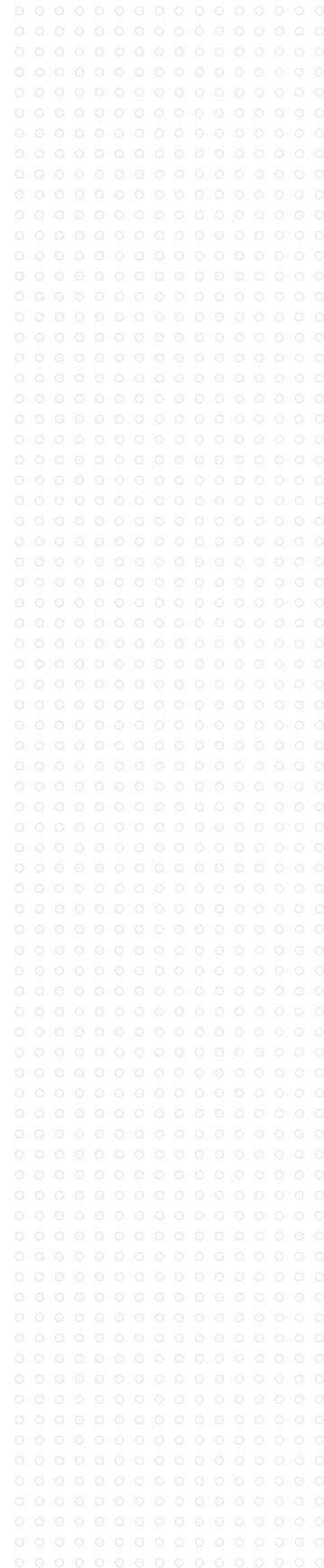
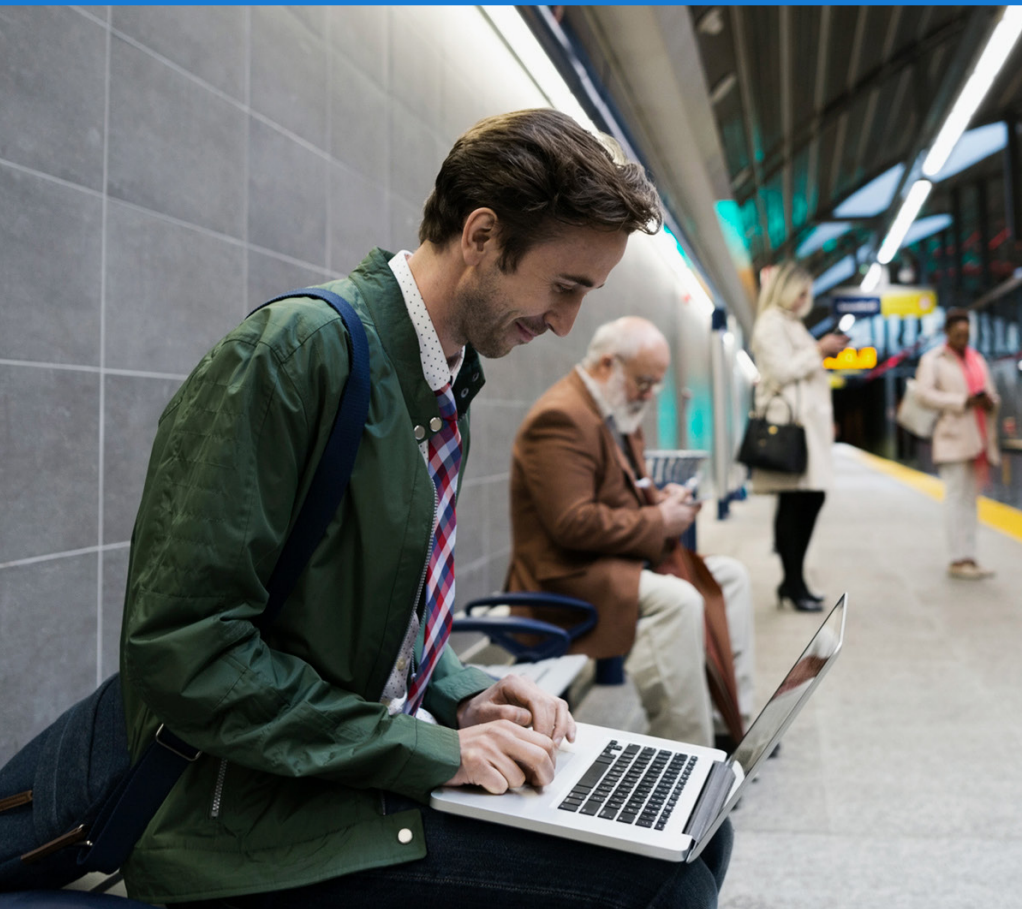
## The Evolving Landscape

New cyber breach scenarios are constantly emerging, and they bring with them a variety of new claims. The fact that there's no industry-standard cyber policy language makes it a tremendous challenge to ensure your Cyber Risk Insurance will really protect you. As a victim of these new scenarios, your business can face additional regulatory oversight. Make sure you're covered with the right cyber policy.

“Just when you think you have your insurance figured out, a new situation arises or an event occurs that impacts your policy's terms and conditions. In this ever-changing environment, it's critical for your broker to understand your goals to negotiate and develop a policy that protects against your unique risks.”

**MICHELLE LOPILATO**

Senior Vice President,  
Director of Cyber and Technology Solutions,  
HUB International



# Four Truths about Cyber Risk Claims Denials

## TRUTH #1

### Claims can be denied due to your failure to act.

The top two reasons cyber claims are denied today are:

- Late reporting
- Failure to use the carrier's pre-approved vendors

Like all insurance claims, cyber risk claims must be reported “as soon as practicable” and within the policy period, or they will be subject to denial. Cyber insurers will have access to gold-standard vendors — including privacy attorneys, IT resources, and forensic, credit monitoring and public relations firms — and may require you to use these vendors under your policy agreement. Failure to do so will likely lead to claims denial, or erode your available limit due to other vendors' inexperience in managing such a claim.

## TRUTH #2

### Claims can be denied at the hand of a novice carrier.

With the rise in popularity of cyber risk insurance, more than 60 carriers now offer product coverage — some at very low prices. However, many lack real claims experience or a proven track record at managing and paying out cyber claims. Don't be the one to test a new cyber risk carrier's capacity to pay claims.

## TRUTH #3

### Claims can be denied due to coverage gaps, deficiencies and exclusions.

Lack of industry knowledge can lead to coverage disparities. Off-the-shelf cyber risk policies will not cover every data breach incident. Furthermore, not every cyber incident triggers cyber risk coverage. For example, spoofed emails that cause a company financial or securities loss are better insured under a crime policy. Ideally, asset protection policies, such as a crime policy, would work in tandem with your cyber risk policy to cover all your gaps, deficiencies and exclusions.

## TRUTH #4

### Claims can be denied because of generic coverage lines.

There is no standard cyber risk policy; however, these policies cover only intangible assets, such as data, and not the loss of money or securities resulting from a breach. Use predictive modeling to determine the potential impact of data loss and business interruption due to a cyber event; based on the results, you can decide which policy — and at what limits — will fit for your business.

## Real Cyber Risk Claims Stories

### NETWORK BREACH EXPOSES 200,000 PATIENT RECORDS AND COSTS \$800,000

A physician's office with no cyber risk insurance experienced a network breach (ultimately traced to a teenager who used the network to increase his bandwidth while playing a video game). The practice's network was left open for two weeks, during which time 200,000 patient records were exposed. While no records were actually compromised, the breach cost the practice more than \$800,000 out of pocket for a forensic breach team, patient notifications, credit monitoring and a privacy attorney, among other expenses. Today, the practice is a HUB client with a robust cyber risk policy in place.

### SHREDDING A MILLION DOLLARS

An employee of a national shredding service cost his company \$1 million in compliance fees when, instead of taking bags of confidential bank and hospital documents to the shredding facility, he dumped them in an open field.

Fortunately, the company retrieved the bags before the sensitive information fell into the hands of cyber criminals. Even so, the company was required by federal and state regulations to notify potentially affected individuals and provide them with credit monitoring, because of the risk that the data could have been breached.

While this case didn't result in a formal lawsuit, it still carried a high price tag — including more than \$1 million in customer notification and credit monitoring costs. However, the company's cyber risk policy, retained through HUB, paid the vast majority of the expenses, leaving only the deductible.





## CHAPTER 4: PROFESSIONAL LIABILITY

Focus on giving advice, instead of defending it.

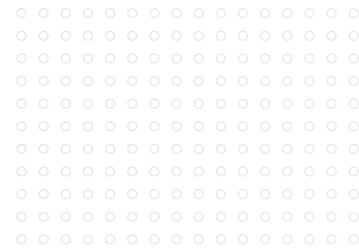
Imagine this scenario: You've provided a service and shared your expertise. And now you're being sued by the very client you helped — *because* of the service you provided.

Regardless of your industry, if you provide guidance or counsel, you are at risk of a Professional Liability (also known as errors and omissions or E&O) lawsuit. And today, with the professional services market becoming increasingly competitive and litigious, your risk is greater than ever.

### TOP FIVE PROFESSIONAL LIABILITY ACCUSATIONS

Professional liability claims can include a variety of accusations. Here are the top five:

- Misrepresentation
- Breach of professional services
- Wrongful business practices
- Misleading advice
- Conflict of interest



### DID YOU KNOW?

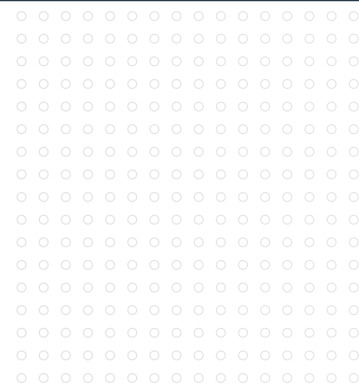
This page shows the

### TOP 5

professional liability claims. But every business faces unique exposures related to the specific professional services it provides. Make sure your policy is

### TAILORED

to your risks.



## It's Not All about You

Make sure to carefully vet your vendor partners; they can be a key source of professional liability exposure and regulatory exposure.

Don't fall into this trap. Evaluate all contractors, subcontractors and vendors before you hire them. If it's too late for that, professional liability coverage can save you from a potentially devastating lawsuit and significant damage to your reputation.

### DID YOU KNOW?

As many as

**57%**

of businesses only evaluate their vendors after engagement — likely after liability has occurred.<sup>17</sup>

This leaves them

**VULNERABLE**

to professional liability lawsuits arising from those relationships.

“If something goes wrong, a small company has a limited balance sheet. They may not have the funds to respond or defend themselves. Traditional professions can't survive without proper professional liability insurance. No one is immune from litigation today. It can mean exposure that people don't even realize.”

#### JEFF VAN GULICK

Executive Vice President,  
Commercial Lines Practice Leader,  
HUB International



<sup>17</sup> [techinsurance.com/blog/errors-and-omissions-insurance/1-in-3-companies-welcoming-big-ee-exposures-with-third-party-vendors/](https://techinsurance.com/blog/errors-and-omissions-insurance/1-in-3-companies-welcoming-big-ee-exposures-with-third-party-vendors/)

## Try It On for Size

There's no such thing as a one-size-fits-all professional liability policy, because each professional services industry and market has its own unique risks, exposures and potential coverage gaps.

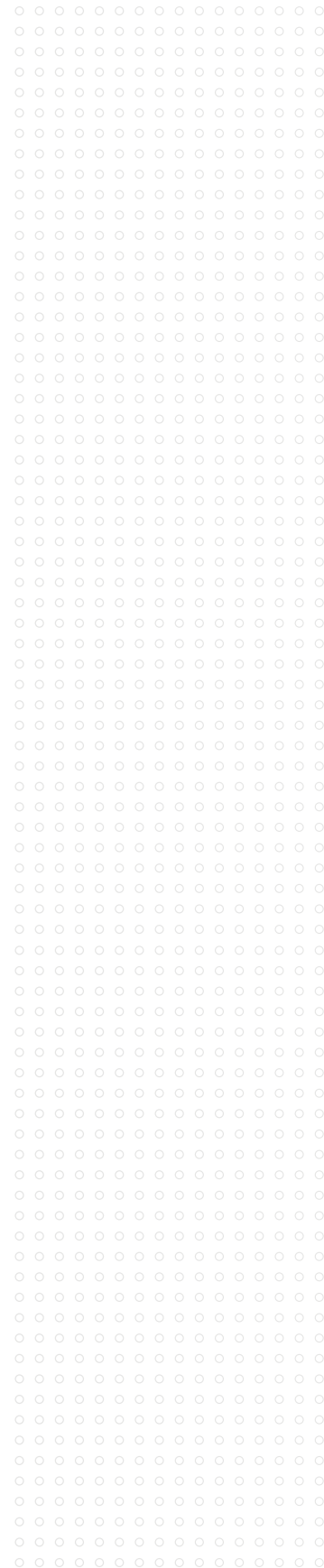
Find a specialist broker to negotiate coverage specific to your industry, market and location.

**REMEMBER: Your general liability policy doesn't cover your professional exposures.** A general liability policy never offers umbrella protection. Rather, it is limited in its scope, applying only to personal and bodily injury and property damage. It will not cover a professional liabilities claim.

“Not everything that happens to you is covered under any one type of insurance, and sometimes things happen that are covered under multiple insurance policies. That's why it's important to explore any coverage available, including any overlap, and measure it all against your risk.”

**MICHAEL MOYER**

Senior Vice President,  
National Claims Manager,  
HUB International



# Top Four Ways to Avoid a Professional Liability Claims Denial

## 1. MAKE SURE YOUR POLICY IS UNIQUE TO YOUR PROFESSIONAL SERVICE.

Look for a broker who specializes in your professional service. Be wary of those who don't complete a thorough analysis of your services and their potential exposures prior to quoting policy limits.

## 2. ENSURE YOUR POLICY IS AS BROAD AS POSSIBLE

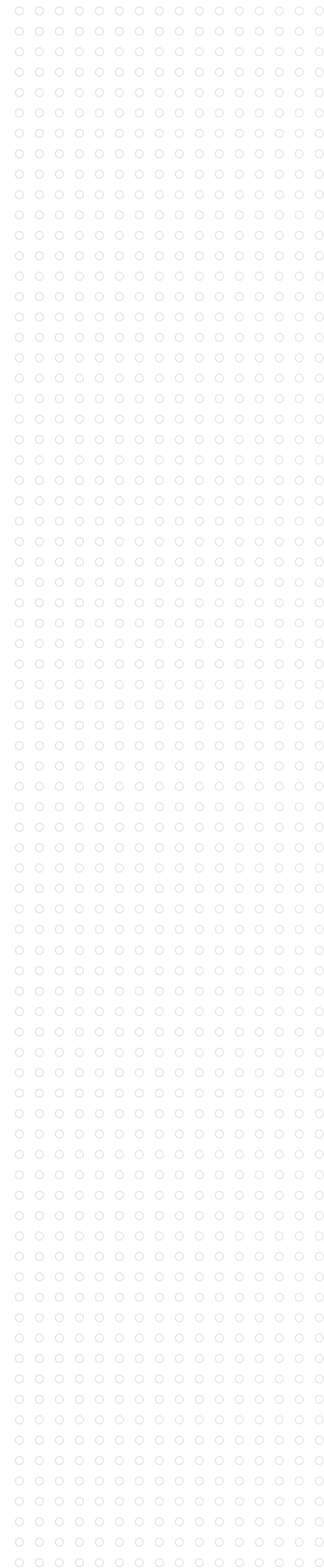
Narrowing exclusions could overlap with your greatest exposures — make sure your core business functions aren't excluded. For example, a technology services firm that has developed an app used to collect data should not buy a policy with a data-collection exclusion.

## 3. BE SURE YOUR POLICY CORRECTLY IDENTIFIES ALL THE PROFESSIONAL SERVICES YOU OFFER.

Make sure the policy's definition of professional services includes *everything* you do; otherwise, you may face exclusions and coverage denial in areas not explicitly mentioned.

## 4. INSIST ON A POLICY THAT TAKES INTO ACCOUNT YOUR ENTIRE SUITE OF COVERAGE.

When all your policies line up together, gaps in coverage will be minimized, if not eliminated.



## Real Professional Liability Claims Stories

### INCORRECT CARE LABEL COSTS A CLOTHING MANUFACTURER \$500,000

A retail store chain sued one of its clothing manufacturers, blaming the vendor for numerous customer complaints and returns related to claims that the clothes shrank when washed. The culprit was eventually determined to be an incorrect care label sewn into the garments, and the manufacturer settled for \$500,000 — which was paid by the company's professional liability policy.

### BAD TAX ADVICE OPENS THE DOOR TO IRS FINES AND AUDIT

A tax consulting firm gave inaccurate advice to a small business; the business then filed misstatements with the IRS that resulted in fines and an audit exposure. The small business sued the tax consulting firm for its error, triggering the firm's professional liability policy.

### ONLINE BILLING SOFTWARE CRASH RESULTS IN A COSTLY PROFESSIONAL LIABILITY CLAIM

Hundreds of companies keep track of, and issue, corporate billing statements using an online application created by one technology firm. Due to an unexpected technical error, the application crashed and was unavailable for 24 hours, leaving users unable to process their statements. A resulting lawsuit led to a costly professional liability claim for the technology firm.

### INVESTORS' EXPECTATIONS PROVE COSTLY FOR ASSET MANAGEMENT FIRM

When an investor's returns do not meet their expectations, it can lead to a significant exposure. One asset management firm found this out the hard way, with a lawsuit that resulted in a \$950,000 settlement. Despite the firm's strong track record, it was not immune to claims by disgruntled investors who, following a downturn in the financial markets, alleged errors on the asset manager's part. Such high-stakes cases can often result from events over which the asset manager has no control, such as an initial public offering (IPO).





## CHAPTER 5: BUSINESS INTERRUPTION COVERAGE

It can all change in a flash.  
Plan ahead for potential business disruption.

A car crash involves multiple employees. A tornado touches down at a key facility. One of your executives is kidnapped. Any of these scenarios could quickly lead to a significant business disruption.

Some organizations — the ones that have redundant internal resources, ready access to capital, and operations spread across multiple locations — can continue to function despite unplanned events. Most others can't.

### COMMON CAUSES OF BUSINESS DISRUPTION

Business disruptions can result from a variety of events. Here are the most common:

- Fire and explosion
- Storm
- Machinery breakdown
- Faulty design/material/manufacturing
- Strike/riot/vandalism
- Key personnel loss
- Flood
- Structure collapse
- Human error/operating error
- Power interruption



### DID YOU KNOW?

Almost

**40%**

of businesses that close following a disaster never open again — and another 25% fail within one year, according to the Federal Emergency Management Agency (FEMA). Similar statistics from the

### UNITED STATES

Small Business Administration indicate that more than 90% of businesses struck by a disaster fail within

**2 YEARS.**



## How Long Could You Last Before a Business Disruption Became Permanent?

Any disruption of your business — no matter what its cause, size or duration — directly impacts all aspects of your operations, and most importantly your company's bottom line.

"Larger organizations have staff in house that can manage through a major, catastrophic event. Middle market companies often don't have the bandwidth or the finances to weather such a crisis. Most don't have the experience to deal with a significant business interruption event. That's where HUB comes in."

### **HART BROWN**

CORP, CBCP, LPQ  
Senior Vice President,  
Organizational Resilience,  
Risk Services,  
HUB International



# A Key Addition to Your Management Liability Solution

Business Interruption coverage is an essential enhancement to the other policies outlined in this report. A business interruption policy intersects with other policies in the following ways:

## D&O, PROFESSIONAL LIABILITY AND EPL POLICIES

When your company or its senior leadership experiences a critical event, business can stall. If this disruption is blamed on a senior leader of the company, a D&O or professional liability claim could result. If it does, an associated business interruption enhancement could be crucial.

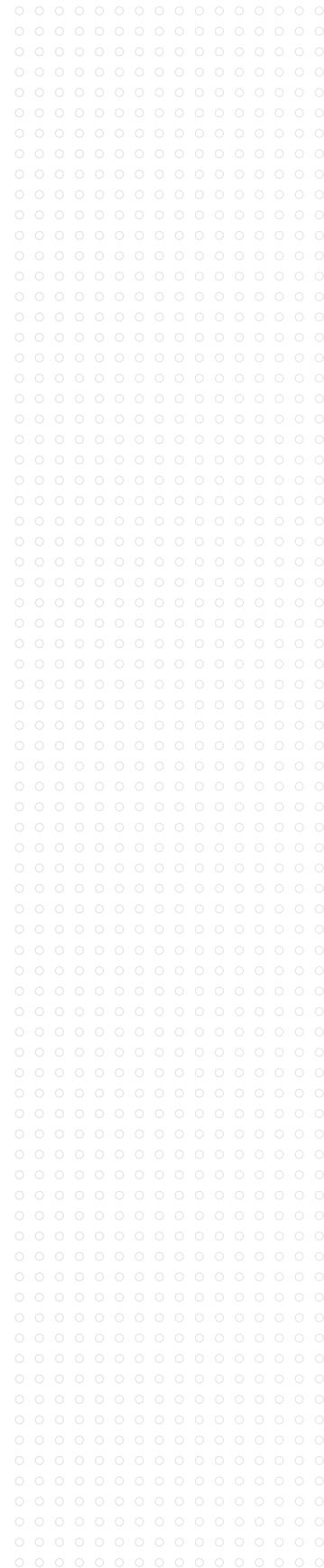
## CYBER RISK

When software or hardware required for business operation is inaccessible due to a cyber breach, outage or ransomware event, operations could come to a halt, leading to a financial loss and triggering the Network Business Interruption coverage under a cyber risk liability policy.

## CONTINGENT BUSINESS INTERRUPTION

When there is a supply chain interruption, it could prevent you from producing your products or delivering your services. In that case, a Contingent Business Interruption policy — coverage that complements traditional business interruption insurance — may be necessary.

A broker who evaluates your company's operations appropriately will ensure the right coverage fit in all categories, helping to eliminate any potential coverage gaps.



## You've experienced a critical event. What do you do now?

In the event of a critical business disruption, what will you do? Typically, the first step is for your senior executive or risk manager to call your insurance broker.

“On the initial call, we explain what is likely to happen in the short term, and what actions the company should take. Then, we plan next steps, and create tools to facilitate those steps. For example, is the media likely to be interested? If so, we'll want to create a media statement that demonstrates concern and leadership. The employees will want to know what's going on, so we'll craft an announcement for them.

“Ultimately, we try to contain the situation as quickly as possible, to avoid unnecessary litigation. If you can manage through a critical event in an appropriate and fair way, showing the right amount of care and concern for those involved, that can help reduce potential additional fallout.”

**HART BROWN**  
CORP, CBCP, LPQ  
Senior Vice President,  
Organizational Resilience,  
Risk Services,  
HUB International



# Keep It Going

You can't prepare for every critical event, but a well-conceived business continuity plan (BCP) can help you recover as quickly as possible. In addition, an organization with a robust BCP will be considered a better insurance risk, and will see a significant reduction in its premiums.

## TOP FOUR BCP CONSIDERATIONS

There are a number of key factors to consider during business continuity planning. Here are the top four:

### 1. Location, location, location

Where will you move operations and personnel during a significant event?

### 2. Task reallocation

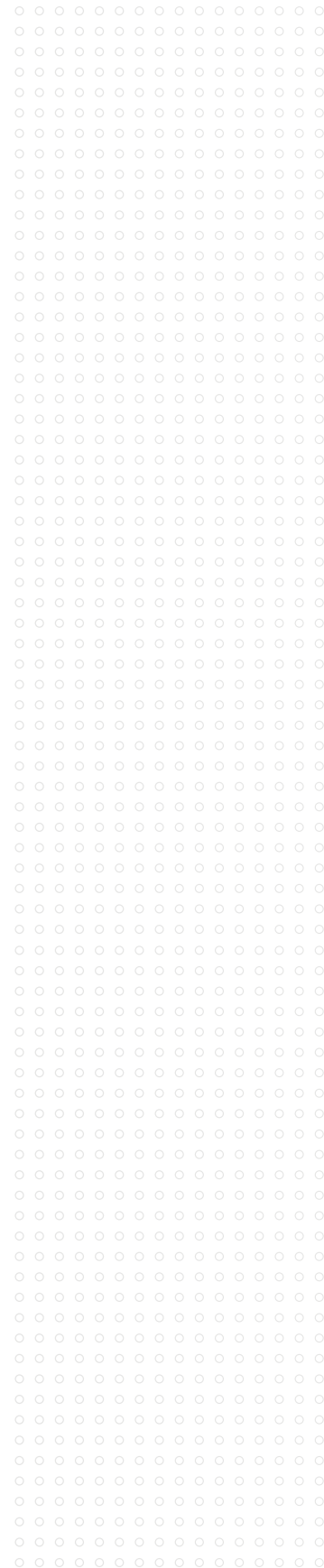
If specific divisions of the company are unable to fulfill their function, who will take over?

### 3. Personnel

Where will employees go during a critical event? Can they work remotely? In which instances will they be expected to remain onsite?

### 4. Lack of data

If you can't access the network or other corporate data sources, how will work get done?



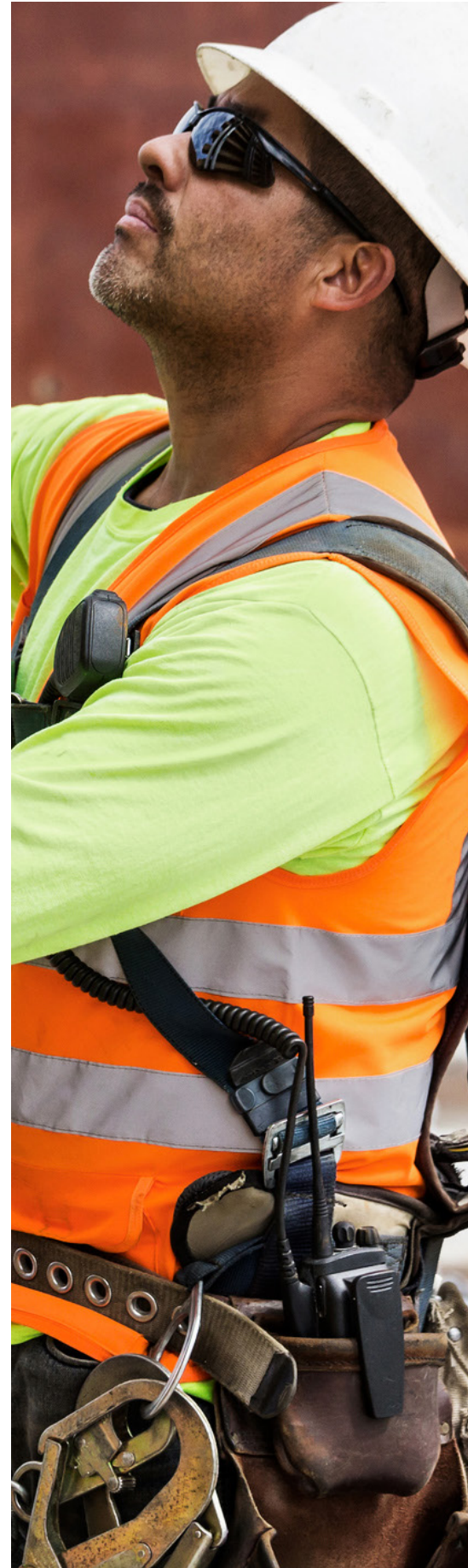
## Real Business Interruption Claims Stories

### CONSTRUCTION SITE FATALITY LEADS TO BUSINESS INTERRUPTION CLAIM

A fatal accident on a construction site, and the ensuing police investigation, prevented work for more than 48 hours. The shutdown led to significant losses for the construction company, and turned into a claim on their business interruption policy.

### SUPPLY CHAIN INTERRUPTION LEADS TO CONTINGENT BUSINESS INTERRUPTION CLAIM FOR BAKERY

A busy bakery couldn't get the particular flour necessary for its products due to political instability in its vendor's geographical area. As a result, the bakery had to halt production — and because the stoppage was caused by the vendor, it triggered the bakery's second-tier contingent business interruption policy.



# Looking out for you. Looking ahead for you.

Together, we'll tailor a business insurance solution to address the big issues you're facing today — and those that will affect you in the future.

Contact a HUB BROKER today at:

[hubinternational.com/BusinessInsuranceInsights](https://hubinternational.com/BusinessInsuranceInsights)

**#LetsDoSomething** for your business

