

An Insured By Any Other Name -- May Not Be an Insured.

I have long been concerned that our Named Insured be reflected accurately on our insurance policies. Prior Knuggets regarding dbas and Who is the Insured have addressed this issue to a certain extent. My concern just received a new twist in the form of a claim against one of my insureds, and the plaintiff counsel taking direct aim against the insured's business name.

Here's the skinny: My insured is a partnership duly organized in the State of California. California does not require the registration of partnerships, so nothing's awry there. The partnership does business under the partnership name, with a descriptive phrase following the name. Sometimes, the descriptive phrase is used without the partnership name associated with it, and is therefore a fictitious business name.

In California, fictitious business names must be registered in the County in which the insured is domiciled. If the business name contains the surname(s) of the individual(s) owning the business, it isn't "fictitious" and therefore does not need to be registered. So the partnership name itself does not need to be registered, but the descriptive phrase does. With me so far?

Well, this insured has properly registered its fictitious business name, so there's absolutely nothing wrong with them using it. But, the claimant's attorney specifically has alleged that the insured is improperly doing business under this name (apparently he can't use the internet to confirm the filing), and has further alleged that in doing so, the insured is perpetrating a fraud upon the public by wrongfully purporting to be a business other than what they are.

Let's imagine for a moment what would happen if the plaintiff's attorney's allegation were correct, and my insured was, in fact, doing business under an unregistered fictitious business name. Do you think the carrier might be able to decline coverage based on all of the insured's actions being illegal or fraudulent in fact? Keep in mind that the plaintiff in the loss needn't prove the illegal or fraudulent act in order for the criminal/dishonest/ fraudulent exclusion to apply. The exclusion merely says "in fact" or "adjudicated", and is generally not limited to the action causing the underlying claim. The carrier itself could move for a finding that the insured was doing business illegally, and once that finding was reached, could decline all coverage. O-M-G! Do you think judges have much patience with businesses in their jurisdiction that do not follow these most basic rules? I would imagine they probably do not.

At the end of the day, having the insured named incorrectly on the policy, or the insured doing business under improper organizational forms or names could be the biggest "Get Out of Jail Free" card a carrier could ever want.

Not all jurisdictions require the registration of "dbas", as does California. But it will behoove you to check the requirements of states within which you write business, and familiarize yourself with the requirements. Most states have websites where you can check the filing and standing of corporations and LLCs, and many, many of them have websites, generally by county, where you can check fictitious business names, if the state requires they be registered. Of course, it shouldn't be your job to check on the legal status of your insureds' purported legal status. But

you'd be so surprised to find how many of them are providing a name on their application that is not the legal entity that needs to be insured. And you generally will not know unless you ask, or unless you double-check online.

You don't want to lock horns with your insureds over getting this right, and I don't for the life of me understand why carriers are not more diligent about requiring this information to be correct (maybe it's the secret pleasure of knowing that if it's wrong, they have that Get Out of Jail Free card, but that would be downright mean), but as part of your normal stewardship of an account, I think it's fair to require documentation of the legal entity(ies) to be covered, and their fictitious business names. And remember, dbas should Never be included on the policy, unless you can be 100% sure that 100% of them will always be included. Even then, don't forget that the legal entity still needs to be listed as an insured without any dba modifying it. There is only a downside to adding dbas, no upside, but that's a Knugget for another time.