



Information for Insurance Professionals In the Know

What's in a Name?

A compilation of Knowledge Knuggets regarding the importance of proper naming of the insured in a professional liability policy.

NOTE: This mini-white paper does not constitute legal advice or the opinion of US Risk Brokers, and is provided for informational purposes only.

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Because professional liability coverage is established through the definition of professional services, and because the coverage is written predominantly on a claims-made basis, the issue of who is named as insured, and when, can make or break your coverage.

There are several situations in which the naming of the insured and the timing of the name can create challenges.

Here is an example:

Acme Corp. is insured with a policy running January 1, 2006 to January 1, 2007. In October of 2006, Acme changes its name to Beta Corp. Nothing else changes. The operation remains the same; the ownership remains the same. You would want coverage to continue with no changes.

The agent will usually request the named insured be changed to Beta Corp in this situation. What you really want is to add Beta as an Insured. Here's why:

Although there would be a paper trail of coverage for both Acme and Beta in the '06-'07 policy, what happens when the policy renews January 1, 2007, and the Named Insured on the policy now reads "Beta Corp.," and Acme is nowhere to be found?

If a claim is made and reported on April 1, 2007, and the defendant is Acme Corp., does the policy need to respond?

Technically, unless there is predecessor firm wording in the policy, Acme Corp. is not an insured during the '07-'08 policy period, so a carrier could decline coverage. As a practical matter, if the '07 policy renewed with the same carrier that wrote the '06 policy, they would have a difficult time declining. However, if the '07 carrier is a new one, they have no history with Acme Corp., possibly no knowledge of Acme Corp., and even though they may have provided prior acts coverage on the policy, the defendant is not an Insured.

To avoid this stumbling block, leave the Acme name on the policy. Do not "change" the name. Merely add Beta to the policy.

If Acme Corp. had not merely changed its name to Beta Corp. but had actually had a change in ownership, had reincorporated, or had taken on investors who acquired a majority interest in the company, there could be significant interruptions to coverage well beyond what a change of name would entail.

We won't go into those right now (stay tuned for a later Knowledge Knugget about Change of Control), but suffice it to say that any time one of your insureds approaches you with a request to do anything to its name on its insurance policies, you are in a red flag situation (at least as it pertains to their professional liability coverages) and will likely need to pose some additional questions.

Insureds frequently underestimate the impact of their internal or structural changes on their coverages, and they also frequently do not want to divulge all of the particulars to their agent.

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That having been said, here are some areas in which your insureds' name(s) can cause challenges:

1. DBAs -- to include or not include is the question
2. Operating divisions or trade names
3. Parent or sister companies
4. Shareholders/owners/partners/LLC members
5. Subsidiaries
6. Additional Insureds
7. Scheduled Insureds
8. Deleting individuals

These areas are in a broad category regarding "Who is an Insured".

Continuing our quest to find the perfect name for our Insured, let's talk about DBAs.

What is a "DBA"? Generally, a "DBA" is a trade name your insured has registered with state or local agencies, as required, in order to use that name in the public domain. The DBA may or may not have any relationship to the insured's legal name. In some jurisdictions, as long as the trade name has certain things in common with the legal name, it need not be registered.

Many insureds want their DBA listed on their policy. This is understandable, since it's the name the public sees most often, and the insured is concerned that if a claim is made against them, it will be made in the name of the DBA, not the insured's legal name, which may not be readily apparent.

However, having the DBA as the Named Insured is a technical error, and even including them along with the Named Insured can be a slippery slope. Here's why:

1. Most applications and declarations pages in professional liability refer to the insured organization or entity. A DBA is neither an organization, nor an entity; it is merely a name. If the DBA is the *only* item shown on the dec, there can be issues when a claim is made against the legal entity behind the DBA, as this will be the first the underwriters have heard of the legal entity, and they tend to not appreciate the lack of disclosure when the application has previously requested the information. (I have seen a claim declined for this, although eventually, after much proof and hassle, we were able to get the carrier to agree to accept the claim.)
2. As an agent, there are many tricks of the trade you can use to make sure you're getting the right information from your insured. Among the foremost is spotting an inconsistency between the organizational form and the insured's proposed name on the app. If the insured is an LLC, a corporation, partnership or other legal form of organization, there are generally laws requiring that a signifier, like "inc." "corp" or "LLC" be used in their name. If your insured is not a sole proprietor, but you don't see "inc." or some other kind of organizational signifier on their app, ask if the Insured Name provided to you is a dba, and if so, get the legal entity name and use it instead of, or in addition to, the dba. (This is a best practice for all your lines of coverage -- not just professional.)
3. Some insureds "do business as" one name for certain operations of their company, and "do business as" a different name (or perhaps no name other than the actual company's legal name) for other operations. This is not uncommon when there are various operating divisions or diverse income centers in an entity. If you have listed one DBA on the policy, then another pops up and you are not advised about it and therefore it is not added to the policy, is it covered? It may depend on how your claims adjuster feels at the time of loss. And as a practical matter, maintenance of a large schedule of DBA names may not be a cost-effective or prudent use of your time.

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4. Not only can the inclusion of DBAs in the Named Insured imply that those who are not listed would not be covered, there is also the question of operations conducted outside the DBAs, and in the legal entity's own name. For example, if Acme Corp. does business as Joe's Business Consulting, and Joe takes a large job as Acme Corp., if the declarations page reads "Acme Corp. dba Joe's Business Consulting" is Acme Corp covered for consulting done in its own name? Food for thought.

And you can see the even greater difficulty if Joe's Business Consulting was the Named Insured, Joe performed his services as Acme Corp., and a claim came in against Acme, as discussed previously.

5. The last issue for this segment is that if the Named Insured is a DBA, there can be all manner of gyrations underneath that level that might never come to your attention, but which can void or compromise coverage. Actual ownership of the underlying entity can change, the entity itself can be bought or sold, but if the DBA is the Named Insured, and it continues its operations and public presentation with no change, the insured(s) may never think to come to you to effect appropriate changes in their policies. If a claim occurs, not only could there be questions raised about continuity and identity of the entity(ies) insured, but policy conditions prohibiting assignment of the policy without carrier consent could come into play to void coverage, and change of control provisions could also have been unwittingly triggered, no tail offered, etc.

There are a few ways to address these issues and pitfalls.

First, make sure you understand how your insured is structured and what their legal names and entities are. Make sure all legal entities are shown on the applications, and on the policies. That will eliminate the situation where the carrier pleads ignorance, never having heard of the underlying entity prior to the claim.

Second, if your insured is concerned about coverage for DBAs, ask them to provide you with a list of all DBAs, and refresh that list during your annual account review. Also advise your insured to keep you apprised of any and all changes and additions to DBAs. Take that list, and submit it to your underwriter or wholesaler, and ask them how DBAs are handled, and how they want to keep track of them, if they feel they need to. The key question is - does a DBA need to be shown on the policy to trigger coverage if a claim is made against them. (I will survey companies on this matter at some point in the future and share my results.)

Third, if your insured does 100% of their operations under a limited, stable number of DBAs, listing the legal entity and the DBAs on the dec is relatively safe and straightforward, but see concern 4 above.

Carriers are generally more likely to respond to a claim against a DBA if they insure the underlying legal entity, than they are the other way around. So the most important thing to remember is that the underlying legal entity must be named on the policy.

There are more things to discuss regarding names, but we'll take a bit of a break and return to the subject later.

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