

What's in a Name? Part 3

Knowledge Nugget, 7/31/08

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.

Stay tuned for more issues and some solutions next week....