Corey Rekers (00:11)
All right, welcome back to The Accel Advantage podcast where we discuss insurance and financial services for business leaders and non-business leaders alike. I'm your host, Corey Rekers. I'm a Partner and President of our Property & Casualty division here at The Accel Group. I am joined today by Mr. Nick Thompson. He's our Director of Legal and Operational Strategy here at The Accel Group. And today we're going to discuss a lawyer's perspective on risk and how it pertains to buying insurance. So welcome, Nick.

Nick Thompson (00:39)
Hey, thanks Corey, glad to be here.

Corey Rekers (00:40
So Nick, I know the audience is incredibly excited to hear about all those potential 'gotchas' that I think sometimes the consumer is trying to figure out how to avoid and what some might consider to be quote unquote the fine print. So before we get into that, I think the audience would love to know a little bit more about you and your background.

Nick Thompson (00:58)
Yeah, you bet. Well, I've spent, hate to say it because it makes me feel pretty old, but I've been almost two decades at somewhere in the intersection of law and insurance, at least, you know, kind of around the edges of those two areas. So I started out of college as a claims adjuster, actually working for a national insurance carrier and spent about four years there. Was in a

team lead role and actually decided at that point, after having dealt with some plaintiffs, attorneys that didn't terribly impress me, thought, you know what, maybe I should go to law school and give that a shot. So I went to law school at DePaul University in Chicago. And after law school, spent about six years in private practice, both in Chicago and in Iowa, where I'm originally from. And sometime into my private practice journey, you know, you're really billing every six minutes. You've got to bill that time and it really wasn't, I couldn't see myself in that role for the rest of my life, and I had a great opportunity to join a large insurance brokerage. And did that, and I've had a variety of roles in the insurance brokerage and sort of the related business space to that and have been in this realm for going on about 10 years.

I do have to throw out the obligatory attorney disclaimer. Don't worry, I'm gonna keep it brief since this isn't being billed by the hour. So everything we discuss today is general information and educational content. I'm not your lawyer, and this isn't legal advice. Think of this more like insurance and risk management tips from your nerdy friend who happens to have a law degree. If you want actual legal advice, you'll need to hire someone for that and with that, let's jump in.

Corey Rekers (02:24)
So in that span of time, you've had the, I would say, the pleasure of working with a lot of different, personal clients and business clients. And would it be right to say that you've seen some pretty questionable decisions when it comes to buying insurance during that time?

Nick Thompson (02:40)
Yeah, I have. mean, I think there's there are questionable decisions both when comes to buying insurance and a really important part of the insurance buying process is

the consultation that goes into it to make sure you're buying the right insurance. And it's both what you're buying and then what's in the policy. So there's some of that. And there's also some elements of things that people, I think, just don't know, especially when it comes to the business insurance side of things that if you don't know, you don't know to ask for it. And if you don't know, you don't know how to implement it within your company. And they're just things that companies can do that can help them transfer risk away from their own insurance programs and away from their companies onto others. To me, that's ultimately the goal.

Corey Rekers (03:15)
So, I personally feel like a lot of that comes down to how well educated that individual business owner is in that buying process. So that's why it's so important choosing the right agent. It can have so many positive or potentially negative repercussions based on that person being responsible for guiding you through that entire process. So, I guess from an attorney's perspective, would you agree with that, Nick? And maybe can you share some of your experiences where you've seen some business owners make some potential mistakes in that buying process?

Especially after they have a claim.

Nick Thompson (03:46)
Yeah, so I think that that's absolutely right. And when you think about if you take a normal business owner, all the lines of insurance that a normal business is going to have, when I say normal, I mean, it could really just be any, any commercial enterprise that's out there. There's a lot of different coverages. Every policy is going to have

tens of pages at a very bare minimum. We could be talking about a hundred pages or more in a policy and you stack those all together. And that's a lot of fine print for a business owner to have to sort through and understand. And that's kind of the key element of the advisors to help them through that. And, know, the law would say every, policyholder has an obligation to read the policy. And that is in fact the law, and I don't dispute it. And that that's the way that's been set up and it's been a law for a long time, but practically speaking,

there's a lot in there and the fact that you are held to the standard of having read your policy doesn't mean that you've necessarily done it as a business owner. So that's where you need that advice to be able to get through that. One thing that I have spent a lot of time on in my career is the notion of risk transfer. Insurance policy itself is a contract, and it's a contract in which risk is transferred, and the insurance carrier takes on some of the business's risks. But the other contracts that are really

pertinent to claims are the contracts that businesses enter into whether it's with their customers or with their vendors. Businesses are entering into contracts every day. And I think a lot of business owners kind of think of the contract is, okay. I'm going to deliver X for Y price, but there's also risk being transferred in every contract that's out there. And the default rule is that everyone is responsible for their own negligence, but what you have in contracts that

you sign as a business owner can really change that pretty dramatically.

Corey Rekers (05:24)
No, that makes sense. And you can really see that. I mean, if we use a real life example potentially of like a construction contractor, because they enter contracts every single day with their end consumer or with their general contractor. Could you potentially walk through kind of a real life scenario where something would go wrong in that case with a contractor?

Nick Thompson (05:44)
Sure,

yeah, I mean, think a lot of businesses would be, if you think about it from the party that's contracting with a contractor a construction contractor, you know, let's say you've got a building and you've decided to put a nice new facade on the building.

And some mistakes were made during the installation process for that construction work. And six months later, after the work is done, part of the facade falls and lands on a customer who's walking out the door and unfortunately kills that customer. Well, the likelihood is that the customer's estate is going to hire an attorney and the attorney is going to file a suit against you as the owner of the premises where this happened.

And whether that plays out poorly for you or not, is going to depend a lot on what you've required the contractor to do in your contract with them. The notion of the additional insured is what I'm getting at here. And what that essentially does is it provides a first line of defense as you as a business owner. It essentially requires

the other party's insurance company to insure you on that policy. So when you get sued, instead of calling your insurance agent and your insurance carrier and having a claim on your policy, instead you're going to a claim on that contractor's policy and their policy is going to provide a defense to you and ultimately pay the claim up to the limit of liability on that insurance policy. It's really the idea there is, you as the business owner, sure, you've got your own insurance, but everybody who has been through

the insurance cycle and the harder market that we've been in are just starting to get out of, understands very well that if you've had claims, that's gonna have a direct negative implication on your insurance policy. So, from my money, I'd say let's get these claims and push them to somebody else's policy. Keep them off our own insurance policy and

program. Keep our loss history as clean as possible. And then ultimately, yield the financial benefit of not having our premium spike as much as they otherwise would.

Corey Rekers (07:33)
That

makes a ton of sense, especially when it comes to risk transfer. And I know you got a little bit more technical in some of the language and some of the things maybe to look for in a contract. In this case, what you use is additional insured endorsement. So, I guess I would ask you, why wouldn't every business owner just insist on that being in the contract to begin with?

Nick Thompson (07:50)
Yeah, I think some of the time it's, I think it's a couple of things. Some of it would be bargaining power. So, it kind of depends on the contract you're entering into. So, I can talk to you about the perfect world and I can say you need to do this every time. The reality is there will be contracts where the party that you're contracting with won't agree to what you're asking. And so that's some of it. But I think the bigger thing is a lack of education. People just don't understand

what to look for. You know, in the construction space, the additional insured endorsement is very prevalent. And contractors who are...

Whoever is responsible for contracts at a given contractor is gonna understand that. But if you're a business owner, and you're just hiring a construction company to do work for you, you don't necessarily know that. And I think that's where a lot of this lies is just a lack of education on what you should be requiring other people to do when they're contracting with when you think about it, we talked about a little bit at the top there that the insurance policy is a contract, and I think anybody that's buying insurance intuitively understands that they don't understand

the interplay with every other contract that they have as a business owner. I think that's really what it comes down to.

Corey Rekers (08:52)
Yeah, no, that makes a lot of sense. Let's look at another endorsement inside of the contract. I know that insurance companies are sometimes known being pretty aggressive about going after another party to recover potential loss that they may have. How common is it for a business to get sued by someone else's insurance company?

Nick Thompson (09:11)
Yeah, it's really common. And in fact, I spent a summer during law school working for a law firm that really all the work that we did was doing just that. We were suing other people on behalf of an insurance company that had paid a claim. So essentially, from the insurance carrier's lens, they've paid a claim. If they have a legal remedy to get that money back from somebody else, they will do that 10 out of 10 times. It's the way of the world.

And there are things just like we talked about the additional insured endorsement, there are things you can do to protect yourself there as well. And the concept would be what's called a waiver of subrogation. And before we get into what that is, probably should talk a little bit about what's the concept of subrogation. It's really what you talked about there, Corey. It's the notion of an insurance company that's paid a claim, will sue another party to recoup what they paid in claim payments and to some extent other expenses that they may have incurred.

There is a actual endorsement to the insurance policy called the waiver of subrogation however, and you can put this in your, your contracts as well. You know, you are a

landlord, and you have a restaurant as a tenant in your space. And there's a fire in the kitchen of the restaurant, and it's determined that there was actually grease buildup in the exhaust system. Now you might say, that sounds like the tenant's problem. The reality is the insurance carrier is going to pay that claim. They're going to pay for

anything that was damaged within the building. If the restaurant was closed for six months, they're going to be paying for that too. All of that, course, assuming that the, restaurant has an insurance policy that does that, which, which most would. The insurance company at the end of all that, they're going to investigate this really carefully and they're going to try to find any other place they can point the finger. And if you're the landlord, and you own this building, likely they're going to find a way to point the finger at you. Whether that would hold up at the end of the day and whether a plausible claim that you're responsible can be made are kind of two

things, and it's beside the point because often so much of this is done before a case would even get into a courtroom. There's going to be litigation, there's going to be attorney's fees, there's going to be the discovery process, lots of money getting spent this whole time. And

ultimately, if you had a waiver of subrogation and you were the landlord, that would prohibit the tenants' insurance company from coming back and suing you at all. It wouldn't be that you get through the whole case and you say, well, there's this waiver of subrogation, you can't do this. You actually at the very beginning of the case would say, hey, we have a waiver of subrogation. Insurance company, you don't have any right to come back after us for these damages. So again, the concept is the same. You're trying to protect your insurance program from claims being made against it. And that is just one

other way to do it. And there's lots of others. I mean look at this as kind of a process with lot of businesses and, you know, as somebody that's been on the insurance brokerage side of it, working with business owners, they have a lot on their mind, right? If you just take the insurance procurement process, that's one of how many other...
,
things they have to think about through the course of a given week or month or year, right? That's just one element of running the business, of

buying insurance. Now we're going within the element of buying insurance to the whole notion of risk transfer, which they don't have to be the same thing, but every business I've ever worked with kind of views those things together. And I think it makes a lot of sense that they do. And so really it's just about getting owners to understand.

Or, it doesn't necessarily have to be the owner of the business, but whoever's working on the risk management program for the company, understands, hey, this stuff really does matter. And it's so hard in insurance, I feel like, to get people to see the light sometimes because you don't know it until you've had that big claim, right? You don't, it's not a big deal until it is. And unlike so many other things a business owner faces, you know, know it, it's right in front of you. And this is kind of an intangible thing that ends up happening, and you didn't know

you needed to pay attention to all those things that you could do to help prevent it until you've really gotten burned, and you say, man, I wish I had done this before. So getting people to link those things up and actually see the importance of it, is probably the biggest uphill battle that I see.

Corey Rekers (13:00)
Yeah, so you hit on a couple of really interesting things there. So obviously the education piece, so you took two examples, an additional insured endorsement and a waiver of subrogation endorsement and kind of look at the potential pitfalls of not having that included in your insurance contract. So, is there a...

from your perspective, kind of an easy button for that particular business owner to maybe just have a better understanding of kind of make sure you don't fall into some of these pitfalls that you just described just a few minutes ago.

Nick Thompson (13:28)
You know, I think probably the biggest easy button there is to work with an agent or a broker who does understand and is willing to take the time to explain these things to you and help you optimize them. Right? I mean, they can't do the work for you, but they can certainly help you along the way, show you what to be looking for and give you recommendations and suggestions for how to implement some of these things to ensure that you're operating at the highest level that you can, from a risk management perspective.

Corey Rekers (13:52)
Yeah, it's funny. So, I really do believe this is where the agent has a real opportunity. So in my opinion, this is where you kind of get to know the personality of the client and get a better understanding of how they would prefer to structure an insurance policy, right? So, when you're doing, yeah, so when you're doing your due diligence, so for an example, kind of looking at like a pie.

Nick Thompson (14:06)
Yeah, definitely.

Corey Rekers (14:11)
Right? So if there are multiple slivers to the pie representing different products that cover specific risks, I would want to understand from that client their risk tolerance for all those different exposures. Right? So for instance, the business owner is traditionally budgeted X for their insurance. And I their tolerance for that might be Y, I'll need to have a dialogue and where they want to allocate those dollars most effectively to cover the exposures that they want covered. And I think that's really important as an agent that you just don't

assume there. So, an example I would give potentially is that maybe you find out someone is willing to self-insure, you know, the first 25 or $50,000 from a deductible standpoint on their building. And they may use the savings for that to beef up their excess liability coverage, for example, so they feel more protected from a potential large liability exposure that they may have. So

I guess from your perspective, Nick, would you maybe agree with that assessment? I guess, what's an example maybe you'd use from your experience where that kind of came to fruition?

Nick Thompson (15:10)
Yeah,

no, I completely agree with that. I think the pie is a good way to look at it. And when it comes to budgeting, I've worked in various business organizations and served on nonprofits. And you think about your annual budget, right? There's gonna be a line item for insurance costs. And that's going to likely be just some kind of, we're gonna increase this by X percent. And I think...

people that have been buying insurance and this isn't just businesses but, but homeowners insurance as well over the last five or ten years with a market that's changed pretty dramatically. Whatever that number was, it probably wasn't enough unfortunately and so, every business owner is looking at that from the perspective of okay, I'm spending more than I wanted to, that's probably going to be a given; within that, how am I going to allocate those premium dollars in the best way. And I think that's where maybe one of those other pitfalls is, is business owners not really

looking at it strategically and thinking maybe a little bit too much about what's right in front of them and missing a little bit of that, the bigger picture. And I think that's a great example. When you talk about self-insuring, some amount of coverage on a building is a perfect example. Or, you know, a lot of companies are going to have a fleet of some sort. And maybe it would be prudent to look at what you're actually going to buy, physical damage coverage on in your fleet. And it might be.

Hey, you know, some of this older equipment that we have are old, older autos. It doesn't make a ton of sense to pay premium dollars to have that physical damage coverage. Maybe we'll take the physical damage coverage off some, you know, either given something under a given dollar value or a given age, and save some premium dollars and use those dollars to go

buy more liability insurance. Because when you think about what's happened in the court system too, and we could have a long conversation about the role

of verdicts, and nuclear verdicts, and social inflation and all of these factors that have come together to

really drive up quite dramatically the average jury verdict that's coming out of juries. And it used to be just places like California and New York. Now it's places like Iowa, too. We've had nuclear verdicts in Iowa and that's not a trend that's going to be stopping. So if I'm a business owner and I want to make sure that I have a going concern to sell when I'm ready to retire or hand down to the next generation of my family or whatever my intention is as a business owner, I think the number one thing I got to be thinking about is what is my biggest catastrophic risk, and what do I need to have from

liability coverage standpoint to best as I can, and this is never perfect, but as best as I can to prevent my business from being taken out by something like that. And when you look at it in that way...

you can shave some premium dollars off on your older vehicles and you know if that thing gets totaled, you can absorb that loss. You can't absorb $5 million beyond whatever liability limit you had. So that's the way I think, that's a conversation that should be had between an insurance agent or broker and the business they're working with to make sure that that full kind of holistic perspective is being taken into account. We don't get lost on what's on this page right in front of me, but really what are we trying to protect here?

Corey Rekers (18:00)
And

I really believe that's really where that expertise in that industry per se comes into that situation or having a better understanding of what questions to even ask. So I think what you're implying is that maybe some companies should spend less and have less coverage on some insurance to buy more of another type of insurance depending on that process, that due process that the agent and that business owner are doing.

Nick Thompson (18:10)
For sure.

That's absolutely

true. And I think that's one that applies,

maybe more than some of other things that we've talked about, it really applies to people buying personal insurance as well. You know, the people that I worry about most when it comes to personal insurance are often our business owners, because if you don't have a ton of assets to protect, then if you don't, you know, you can't squeeze blood from a turnip is the old adage, right? But when you're a business owner and you have, you know, even though your business is an LLC or it's a corporation or what

have you, you've got limited liability. You're also likely...if you're running a

business taking distributions and you've got the financial resources that have come with that, and I think too many business owners aren't really thinking about their personal liability. Especially those with teenage drivers. You're liable as the owner of a vehicle so if your child is driving and they're 16 years old and...

Boy, I don't even want to talk to you about this right now, Corey, because I know that you're dealing with some driver's ed in your family. Not dealing with, you've got the pleasure of having a child going through driver's ed.

Corey Rekers (19:13)
Ha ha ha ha.

I absolutely have the pleasure

of my son going through driver's ed in this moment, yes. Absolutely true statement.

Nick Thompson (19:24)
Uh huh, so I

worry about those, you the people that have, have kids that are learning to drive and are out driving on their own. You own the vehicle, right? Your kid's driving it. If something bad happens, you know, obviously we first and foremost hope that everyone's okay. But beyond that, if they're not, now we're looking at what are your assets and the additional million or 2 million or $5 million in personal umbrella coverage.

I don't want to say it costs you nothing, but it's very little and those are things I think people really need to be looking at and just making sure that they're adequately protected.

Corey Rekers (19:54)
That's really well said. And so, I guess from a,

individual consumer standpoint, we kind of make that pivot into personal home and auto. And you gave a great example there in my personal experience with my son, who's going through that training right now to be a respectable and responsible driver on the road. Yeah, we have to look at our insurance policies as a whole and maybe we need to increase our umbrella limits a little bit and we may take on a little bit higher risk on our...

property deductibles to maybe offset some of those costs. So that's something that we should consider as a consumer of insurance ourselves. So, is there any other insights, things to look at from a personal liability perspective, that you can give as an example?

Nick Thompson (20:35)
You know, one

of the things that, and really this comes from my prior life as a claims adjuster many, years ago, but I was working in a state with a really high percentage of uninsured drivers. And I would find people had, so there's a coverage, called uninsured or underinsured motorist coverage, and essentially what that does, you have this coverage on your own insurance policy. So if you are hit by somebody that doesn't have insurance or they don't have enough insurance, then your policy essentially steps into the shoes

as the insurance carrier. So it mimics what their carrier would have done, but now it's your own policy. Because it's, I think in recognition of it being such an important coverage, many states will mandate that A, it has to be offered to every consumer, but B, if the consumer wants to reject it, they actually have to physically sign a form rejecting that coverage. And, you know, I'll be honest, when I was in college, I think I was buying insurance for myself for the first time. I think I signed that rejection form. like, oh, this is like $15 for myself.

six month policy period, I don't have the money to pay for this. You know, I didn't know, I didn't really understand what it was. And now having had the experience of seeing those claims pay out, I think that's just a no brainer. Nobody should ever on their personal policy be rejecting that coverage. So that would be an important one. And the discussion can get a lot more nuanced on the business policy because there's workers' comp that is a substitute for that in some ways. So that's a, you know, that's a discussion that I love having with people. I kind of geek out on it, but when you're a

personal

auto policyholder, should be not only never rejecting uninsured or underinsured motorist coverage, but you should be getting as much limit as you can, which is typically going to match your limit of liability that you've purchased on your policy. You can buy that much underinsured, uninsured motorist coverage, and that's what you should be doing. It's not going to cost you hardly anything.

Corey Rekers (22:13)
Well, and that's a great point. One of the main selling points of working with an independent agent who's got many, many contracts that they can go to in that particular coverage, if you're working with a direct writer, it is possible that a direct writer may not want to add that coverage for those policies to limit their exposure. Have you seen that from your experience as an attorney?

Nick Thompson (22:32)
Yeah, yeah, no,

absolutely. I've seen it both in this business and the legal side of things as well that, you know, with a direct writer essentially you've got one product, you need to make that product fit with whoever you're selling it to. The beauty of an independent agent is they have...

almost limitless different insurance marketplaces they can go to, and the whole universe of coverage forms is available. So that allows the agent to really structure a policy that makes sense for that specific company rather than trying to make the company fit into the policy form the agent has to offer.

Corey Rekers (23:06)
Well said, well said. Nick, you've given the audience quite a bit to think about. Incredibly grateful to have you on the podcast. Really fun topic today. Who would have thought insurance could be so interesting?

Nick Thompson (23:18)
I geek out on this stuff, and I hope people listening got a nugget or two that they can take with them, but this is stuff that I can talk about for days. I see that we've talked here far longer than...if you would have asked me, how long have we been talking about this? I would have said five minutes. There's more, I'd love to talk to anybody that has questions about this. Always happy to have a conversation and talk about these principles and also give some suggestions for how you can really implement these when it comes to your own insurance programs.

Corey Rekers (23:43)
Awesome. Well again, thank you for your time today. So on behalf of our listeners, certainly appreciate your insight and wisdom on what we would say an attorney's take on what to look for when buying insurance. So, if you found this episode helpful, please make sure that you check us out at acceladvantage.com or accelwealthmanagement.com and please follow us on Facebook, LinkedIn, Instagram and YouTube. Please be sure to leave us a review,

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