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The firm welcomes Joe F. Yonek, Marc A. Johnston and Megan L. Welch. Joe joined the firm as Of Counsel and will continue to practice in Vancouver, Washington. Joe's law practice is focused exclusively on estate planning and coincides with the opening of the firm's office in Vancouver. Joe is licensed to practice law in both Oregon and Washington. Marc is a 2005 graduate of Gonzaga and is practicing with the firm's litigation department. Megan is also a 2005 graduate of Lewis & Clark Law School and most recently clerked for Judge Jean Kerr Maurer, Multnomah County Circuit Court. Megan joins the firm's business/transactional team. Marc and Megan are both licensed to practice law in Oregon.

We are pleased to announce that, effective April 10, we will be in new offices located at 1030 SW Morrison Street. Our new home is a designated City of Portland Landmark formally determined eligible for inclusion in the National Register in 1980. Constructed in 1904 by the General German Aid Society as a settlement facility for German-speaking immigrants, the building was named the Hotel Arminius. The building underwent a year long renovation project during 1995-1996 focused on restoring the building to its historical form. We invite you to visit us at our new offices.

*Parsons Farnell & Grein, LLP* is a boutique firm specializing in helping Northwest businesses and their leaders. Our law practice concentrates on general business litigation, policyholder insurance disputes, construction litigation, business formation, business and real estate transactions, estate planning, probate, and tax planning/ litigation.

## Reading Your Insurance Policy, A Ulysses-esque Journey

Jim Guse



Several years ago, I came across a list of the "100 best novels ever written." My curiosity peaked, I drove to the local book store and paid \$11.95 for a copy of the purported number one, Ulysses, by James Joyce. It took me 10 pages to figure out the book was written in English, 20 pages to lament the thousands of dollars I spent on an education; and, after 30 pages, I drove to a nearby convenience store to throw the book away. I felt the distance was necessary to ensure I would not be tempted to make another attempt at reading the greatest novel ever written. At \$11.95, I got off easy, most individuals and businesses spend thousands of dollars a year on insurance policies that never get read. My only risk in not reading Ulysses is being stuck on an elevator with an English professor and having nothing to talk about, the risk of not reading an insurance policy can mean hundreds of thousands of dollars in uncovered liability.

Having worked with clients on insurance coverage for some time now, I have discovered a number of truths that apply to the vast majority of people I come in contact with: 1) People generally buy the cheapest insurance available; 2) People do not read their policy before or after it is purchased; 3) Many people do not even have a copy of their policy. While it is certainly understandable

how reviewing insurance policies falls to the bottom of nearly every to-do list, a few examples of the problems this creates may cause you to rethink.

Many of the policies we review are specific to the construction industry. On more than one occasion, I have come across a particular exclusion for buildings with more than four units. The exclusion is harmless enough by itself, except when you consider that the project the insurance was purchased for consisted of buildings with more than four units. The insurance company, unsurprisingly, denied coverage. I have also come across a somewhat standard exclusion in the construction industry for all damage stemming from an Exterior Insulation and Finish Systems or "EIFS." While the exclusion itself was not surprising, the fact that it was in an insurance policy for an EIFS installer was surprising. Again, the contractor found himself essentially without coverage despite the numerous premiums he paid on the policy.

This phenomenon is not limited to the construction industry. Business policies, homeowners policies, and auto policies all could contain exclusions or conditions that exclude the very liability for which the insurance was purchased. If you are going to pay money for protection and piece of mind, it is worth

the extra time or money to make sure the policy is in line with your expectations. While ideally this would be done pre-purchase, it is never too late to review your coverage to identify any gaps. With that in mind, I offer the following tips:

- 1. Have a professional review your policy** - While it may not make sense to hire a lawyer to review homeowners or auto policies, for businesses, this is a wise investment;
- 2. Ask your insurance agent** - If you have questions, ask your agent. Remember, your agent works for you;
- 3. Review your policy with a purpose** - If you are a business, think of the five most likely circumstances in which you would get sued and then read the policy with those in mind;
- 4. Obtain and read the policy** - If nothing else, obtain your policy and read it one time through. If there is a glaring problem, take further action as described above.

## **Commercial Crime Policies: How to Recover Your Policy Limit Multiple Times Over On a Single Claim**

*Michael Farnell & Emily Robertson*



An unfortunate trend is the increasing number of insurance claims crossing our desks from theft by employees or other service providers. Should you find your business the victim of employee dishonesty resulting in monetary loss, know that your recovery may be larger than your insurance carrier represents. In fact, depending on the circumstances of your claim and the language of your policy, you may be able to easily double your policy limits, or more. In *Robben & Sons Heating, Inc. v. Mid-Century Insurance Co.*, 189 Or App 153 (2003), the Oregon Court of Appeals expressly allowed insureds to recover their policy limits per

each applicable policy period under a commercial crime policy. Put another way, the Court found that each policy period was a new contract for which a separate premium had been paid, thereby entitling insureds to the benefits paid for by each separate premium payment. If the facts supporting your insurance claim span multiple policy periods, you likely have an excellent claim for recovering multiple policy limits. Of course, the extent of your potential additional recovery depends on the specific facts of your insurance claim and the specific language of your insurance policy.

## **Business Divorce: Breaking Up Is Still Hard To Do**

*John Parsons*



When businesses are started, the owners typically view their universe with excitement and anticipation, irrespective of the form in which that business will be run. Businesses today in Oregon and Washington are typically, upon the advice of legal counsel, run through some form of limited liability entity; namely a corporation, a limited liability company or a limited liability partnership. One of the primary purposes of creating an entity in which to run your company is to insulate yourself, to the extent the law allows, from personal liabilities. The initial formation of such an entity can be accomplished without the assistance of legal counsel. If you are, however, entering into business with co-owners, creating an entity through which you will run your business without the assistance of counsel may be unwise.

Consider the following hypothetical: lifelong friends, Ernie and Buster, decide to purchase a small apartment building. Ernie and Buster each contribute one-half of the funds necessary to purchase the property. They download a form from the Oregon state website and quickly and cost-effectively form a limited liability company by filing articles of organization. They informally agree that Buster will be responsible for on-site management and Ernie for financial oversight. The building generates revenue and business is good. A family crisis arises for Buster, and he can no longer attend to the on-site management in the same fashion. Moreover, the relationship between

Buster and Ernie is strained because the family crisis arises from the disintegrating marriage of Buster to Ernie's younger sister. Sides are taken and not surprisingly, Ernie and Buster are not on the same side. Ernie decides to "fire" Buster. Buster claims he cannot be fired, and claims that Ernie cannot act on any business decision without Buster's express participation and agreement.

When forming an entity, it is important to plan for the possibility of owner disputes. The best, and perhaps only, time to do this is when there is in fact no dispute. At this juncture, Ernie and Buster are unlikely to agree on how to resolve disputes. What if Buster wants to sell the property, in order to fund a divorce settlement? Who is in charge of the entity? What if they can't agree on what day of the week it is?

There are several key provisions which should be included in an operating agreement attendant to the formation of a limited liability company. While the purpose of this article is not to provide an exhaustive list, there are a few key provisions which could help in such a scenario. For example, an operating agreement will likely provide for management responsibility, giving one or both owners specific authority to hire and fire. Moreover, in the event of a dispute, the agreement will likely provide for a dispute resolution mechanism, such as mandatory mediation and/or arbitration, in lieu of litigation.

### **DISCLAIMER:**

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