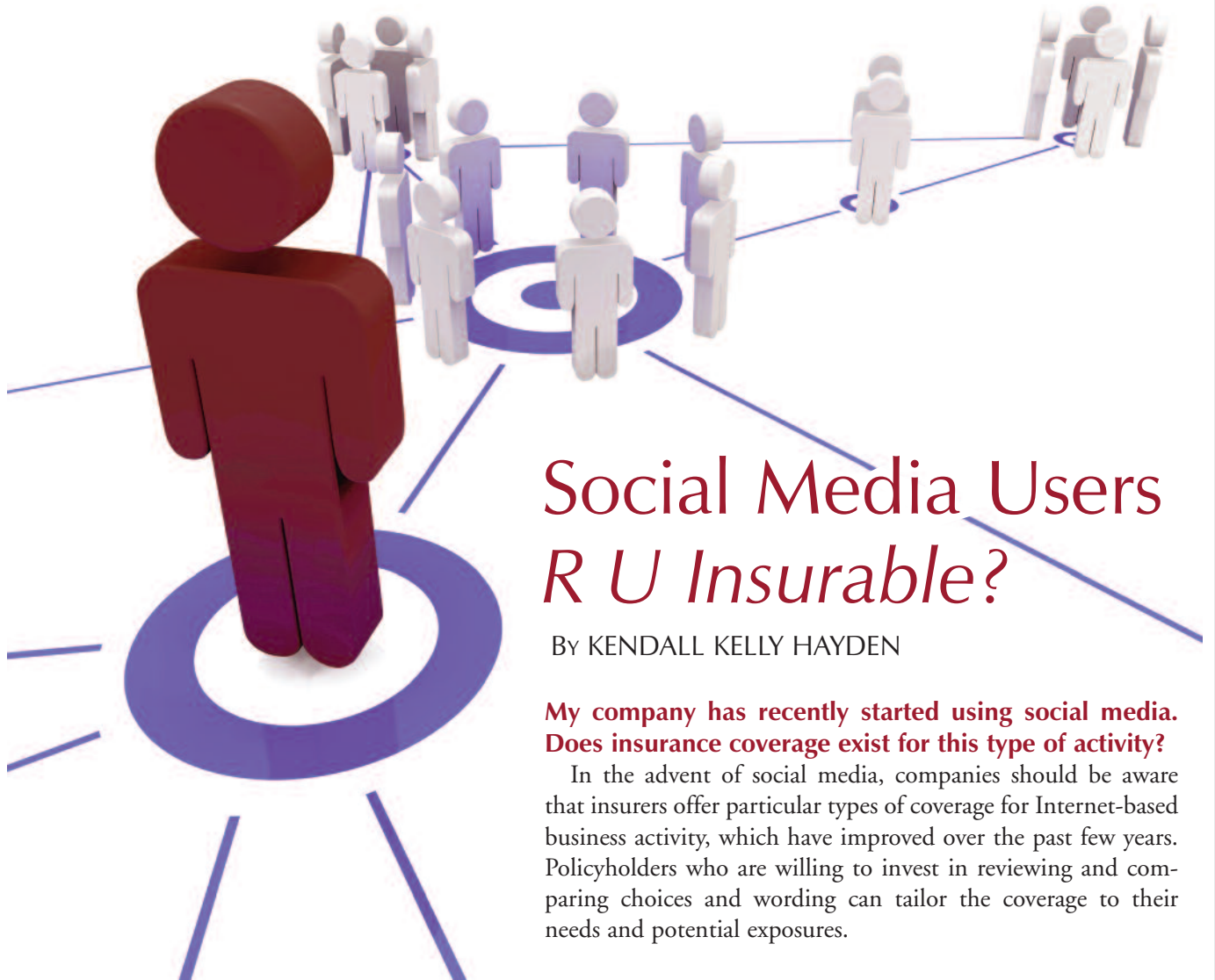




INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

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Social Media Users *R U Insurable?*

BY KENDALL KELLY HAYDEN

My company has recently started using social media. Does insurance coverage exist for this type of activity?

In the advent of social media, companies should be aware that insurers offer particular types of coverage for Internet-based business activity, which have improved over the past few years. Policyholders who are willing to invest in reviewing and comparing choices and wording can tailor the coverage to their needs and potential exposures.

How do I know what type of insurance to purchase for social media activity?

It depends on what your company's business is. If your business uses social media for marketing purposes, the risks you look to insure may include advertising and defamation or privacy claims. By contrast, if your company seeks to insure against consumer class actions or complex securities claims arising out of social media, the type of coverage you need will differ. When considering purchasing or renewing insurance coverage, you should first identify the type of risks that your

business undertakes, as your current insurance may provide adequate coverage without having to purchase new insurance.

How do I know if my current policies provide the coverage I need so I don't have to purchase more insurance?

When the corporate world consisted mostly of brick-and-mortar businesses, the two most common types of insurance for businesses were comprehensive general liability (CGL) policies and commercial property policies. A CGL policy offers coverage for bodily injury, property damage, and claims arising out of

"personal" and "advertising injury" brought by third parties, while property policies offer coverage for business interruption losses and damage to real and/or personal property, so long as the loss results from physical damage to covered tangible property.

If your business is concerned with protecting itself from defamation or violations of privacy claims that may be posted on the Internet vis-à-vis a social media outlet, your traditional policies may be sufficient. For example, the definitions of "personal" and "advertising injury" in CGL policies typically include



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coverage for libel, slander, invasion of privacy, infringement of copyright, and malicious prosecution.

While first-party coverages in combination with third-party coverages have historically fulfilled the comprehensive needs for traditional businesses, businesses in today's world that commonly involve a web-based aspect need additional coverage. For example, a common exclusion in a CGL policy excludes "Insureds in Media and Internet Type Businesses." This exclusion excludes losses for personal and advertising injury committed by an insured whose business is 1) advertising, broadcasting, publishing, or telecasting, 2) designing or determining content of websites for others, 3) or an Internet search, access, content or service provider. Similarly, property policies usually exclude coverage for electronic data loss and other types of losses caused to intangible property. Therefore, if your business falls into one of these categories or is exposed to potential losses of intangible property, beware that your traditional policies may not be equipped to protect your company's risks.

I have basic property and liability coverage. What do I need to know about specialized insurance coverage for my social media needs?

Technology-related coverage exposures include, but are not limited to, Internet, e-commerce, cyber liability, network security, media, and privacy policies. These policies insure technology errors and omissions without the requirement of physical damage to property found in property and CGL policies, provide coverage for liability arising from security breaches, protect insureds from liabilities arising out of the use and dissemination of media, and insure risks

arising out of one's right to privacy. These coverages seek to close many of the gaps created by traditional CGL and property policies, which were not drafted with the intent to fully cover technology and Internet exposures. They can generally be purchased in any variety depending on the risks the applicant seeks to insure. You should beware, however, that these types of coverage might require more preparation than expected. For example, many cyber insurers require businesses to implement certain information technology security standards before providing coverage, and these measures may be too costly for smaller businesses. Further, standard e-commerce policies may not cover businesses not engaged in e-commerce.

What endorsements or provisions should I be aware of in my policy once I obtain social media coverage?

First, obtain and thoroughly examine a certified copy of your policy at the inception of the policy. Ask questions of your agent if necessary.

Second, familiarize yourself with the type of policy you have. Depending on the policy language, coverage provisions differ in their meaning from one type of policy to the other. What may constitute "property damage" under an e-commerce policy will not be the same as what constitutes "property damage" under a CGL policy. This distinction is vital to understanding which risks your business will and will not be protected against.

Third, understand the policy's insuring agreement and applicable exclusions. Realize that many exclusions are narrowly tailored and contain "exceptions" where coverage will be provided; where coverage is not provided, however, an endorsement or extension of coverage may be available

to add coverage back in. An attorney or your agent should provide the expertise you need prior to your purchase. ✪



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