Corporate Closing, Sale and Run Off Discussion

Statement from Retailer: The company is closing or being sold, and I need run off or want to cancel the policy.

This happens frequently and we need to take a moment to help determine what is actually happening with the insured because things are not always as they appear. If we do not completely understand the situation with the insured we cannot provide the best consultative advice.

Thus, here are the questions we need to ask and get answers to:

SCENARIO #1 – WE ARE CLOSING THE BUSINESS.

If this is the case, then we need to ask if the corporate entity will still exist after closing. The answer is almost always yes since what the insured means is that they are shutting down operations to the public, but there is always extra work to be done to dissolve the corporate entity that extends beyond closing operations.

For instance, the corporate entity will still have to pay any creditors, vendors or stakeholder. They will still need to liquidate any assets they have. They will still need to review all contracts to make sure they are in compliance. They will still need to pay taxes in the current and maybe future year.

All those processes are things that create potential wrongful acts by the Directors and Officers of the entity. Thus, coverage should not be canceled or put into run-off as there would be no coverage for the wrongful acts done after the company "closed." They should carry coverage until they are ready to dissolve the corporate entity with the state. At that time they should purchase run-off.

SCENARIO #2 – WE ARE SELLING THE COMPANY.

There are various types of sales and each one requires a different type of insurance response. Therefore, we should ask the client what kind of sale it is (asset sale, liability sale, equity sale).

Asset Sale

In an asset sale only the asset of the corporate entity is being sold. This means that the corporate entity still belongs to the shareholders along with all the liabilities.

Similar to the scenario where a company is just closing the business, the corporate entity still needs to pay any creditors, vendors or stakeholder. They will still need to pay the proceeds of the sale to the shareholder. They will still need to review all contracts to make sure they are in compliance. They will still need to pay taxes in the current and maybe future years.

All those processes are things that create potential wrongful acts by the Directors and Officers of the entity. Thus, coverage should not be canceled or put into run-off as there would be no coverage for the wrongful acts done after the company sold the assets. They should carry ongoing coverage until they are ready to dissolve the corporate entity with the state. At that time they should purchase run-off.

Asset and Liability or Equity Sale

If the company is selling its assets and liabilities or its equity (which is basically selling the entire company), then they can purchase run-off at the time of the sale because the purchasing company is then responsible for anything that happens after the sale and the current insured has no more liability except for wrongful acts that took place before the sale.

If there is uncertainly then it is always best to ask for a copy of the buy/sell agreement. The insured is sometimes reluctant to give this and we may need to signed an NDA (Non-Disclosure Agreement), but is the best way to determine what is really happening with a transaction.