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Labeling Mexican Cartels as Terrorist Organizations

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Employment Practices Liability Coverage

By Josh Ring / EL DORADO INSURANCE AGENCY INC.

►► In an industry where high employee turnover is normal, how can a company protect themselves from wrongful termination lawsuits? Over the past decade, the number of employees alleging claims such as wrongful termination, discrimination, sexual harassment and retaliation has increased exponentially. Employees' willingness to sue has been further compounded by the fact that settlements and judgments in these suits average a six-figure dollar amount.

EXAMPLES OF SOME TYPICAL EPLI CLAIMS COULD INCLUDE:

- A company begins to experience financial problems and as a result decides to downsize. The president writes a memo to the board stating that senior personnel should be terminated in order to make room for young, energetic people who do more work at a lower salary level. The 50-year-old operations officer, a 15-year employee, runs across the memo prior to leaving. He sues for violations of the Age Discrimination in Employment Act seeking back pay, lost benefits, attorneys' fees, compensatory damages.
 - A security firm is providing services at a small bank. The officer begins interacting with a teller during his shift, telling jokes and making small talk. Eventually the officer crosses the line and makes some suggestive comments to the teller. The teller files suit against the security company and the officer for harassment and infliction of emotional distress.
- These employment practices claims, which range in scope and size, have been

further compounded by a few additional factors:

- Plaintiff attorney's eagerness to sue employers for employment-related issues.
- Recent changes to workplace laws have expanded employees' rights, opening new and creative ways to bring "causes of action" against their employer.
- Third-party claims brought by customers and consumers asserting discrimination or harassment.
- Recent economic conditions have led to high rates of unemployment. This leads recently terminated workers to look for an "easy out."

It is for these reasons and more that a private security firm should consider protecting themselves with an Employment Practices Liability Insurance (EPLI) policy. In today's litigious environment, merely complying with employment laws, committing resources to employee training, and documenting will not eliminate financial consequences. Even in instances where the employer has done nothing wrong, the cost to defend themselves from such claims can routinely exceed \$100,000.

EPLI policies can vary from carrier to carrier and there are a number of factors that should be discussed with your insurance broker prior to making a decision on such coverage. Specifically with regards to the security industry, some exposures are more prevalent and it is essential that they be covered by the policy. For one, many policies exclude independent contractors, part-time, temporary, or seasonal employees. Since it is a very common practice in the security profession to hire such

employees, policies should be examined to ensure that these individuals are included. Additionally, the overwhelming majority of security officers spend their day largely unsupervised. Their time may be spent interacting with your client's employees or the general public. As noted earlier, third-party claims against a corporation are on the rise, and their inclusion on your policy is vital. Since EPLI policies are traditionally not written with third-party coverage, open dialogue with your insurance professional is key.

In conclusion, an EPLI policy can protect a security company (and its owners) from claims of discrimination, sexual harassment, wrongful termination and breach of employment contracts. Though many of these claims may prove to be frivolous, the cost to defend and the time required defending such a claim makes this something every company owner should consider to protect themselves and their livelihood. **MS**

Josh Ring is the vice president of El Dorado Insurance Agency, Inc. For more than 40 years, El Dorado has represented companies to find the best insurance solutions at the lowest premiums possible. Unlike other insurance brokers, El Dorado specializes in offering tailored programs and services to meet the specific and demanding needs of the security industry. For questions contact Josh at 800-221-3386 or joshring@eldoradoinsurance.com.



Josh Ring

Labeling Mexican Cartels as Terrorist Organizations

By Jeffrey F. Addicott, Distinguished Professor of Law & Director, Center for Terrorism Law / ST. MARY'S UNIVERSITY SCHOOL OF LAW



Jeff Addicott

Given the increased danger to lives, property, and civil order to this nation and to Mexico posed by Mexican drug cartels, some in the United States have asked whether the term "terrorism" should be an appropriate descriptive label to employ. While a legal argument might be crafted for designating the drug cartels as terrorist organizations, the failure of the international community to provide a universal definition of the term coupled with the negative connotations associated with America's war on the terrorist network

al-Qa'eda would argue against such a move.

The postmodernist cliché, "one man's terrorist is another man's freedom fighter" stands as a significant barrier for the international community in terms of reaching a consensus on a precise definition of terrorism. Perhaps the best attempt to reach consensus occurred in 2005 when then Secretary General of the United Nations, Kofi Annan, offered a wonderfully succinct definition to the United Nations General Assembly for adoption:

[A]ny action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants, with the purpose of intimidating a population or compelling a government or

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an international organization to do or abstain from doing any act.

Asking for an exception for "wars of national liberation," the 56 member Islamic conference rejected Annan's definition, essentially blunting adoption by the general assembly

In the U.S., the difficulties in definition are not related to a reluctance to use the term terrorism, but rather they rest in the sheer number of different government instrumentalities and federal statutes that have offered independent interpretations of terrorism which, while similar, are not identical.

For instance, the Patriot Act provides similar definitions for "terrorist organization," "domestic terrorism," and "international terrorism." A terrorist organization is defined as one that is:

(1) designated by the secretary of state as a terrorist organization under the process established under current law; (2) designated by the Secretary of State as a terrorist organization for immigration purposes; or (3) a group of two or more individuals that commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities.

Domestic terrorism is defined in the Patriot Act with a slightly different emphasis.

DOMESTIC TERRORISM IS THE "UNLAWFUL USE, OR THREATENED USE, OF FORCE OR VIOLENCE BY A GROUP OR INDIVIDUALS BASED [IN THE UNITED STATES]... COMMITTED AGAINST PERSONS OR PROPERTY TO INTIMIDATE OR COERCE A GOVERNMENT, [OR] THE CIVILIAN POPULATION ... IN FURTHERANCE OF POLITICAL OR SOCIAL OBJECTIVES."

International terrorism is set out in the Patriot Act as follows: International terrorism involves violent acts or acts dangerous to human life that violate the criminal laws of the U.S. or any state, or that would be a criminal violation if committed within the jurisdiction of the U.S. or any state. These acts appear intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the U.S. or transcend national boundaries in terms of how terrorists accomplish them, the persons they appear intended to coerce or intimidate, or the place in which the perpetrators operate.

If a universal definition is not practicable, one can at least list four key characteristics of terrorism that better reflect the activity:

1. The illegal use of violence directed at civilians to produce fear in a target group.
2. The continuing threat of additional future acts of violence.
3. A predominately political or ideological character of the act.
4. The desire to mobilize or immobilize a given target group.

In this context, the Mexican drug cartels certainly employ the tactic of terror in their activities, but it remains to be seen if the drug cartels will engage in political activities to a greater extent than in the past. Certainly, the drug cartels will back the leftist candidate in the upcoming 2012 elections in Mexico. They will use money and perhaps violence by means of acts of terror.

From a policy perspective, given the use of the law of war by the United States against the terrorist network, al-Qa'eda to kill,

detain and prosecute by military commission, the use of the term "terrorist" has taken on a markedly negative connotation in the international arena when used by American officials.

In short, if the Mexican drug cartels are labeled by American officials as "terrorists" many would immediately assume that the correct rule of law that the U.S. might employ would be the law of war and not domestic or international criminal law. While this assumption is certainly not correct, confusion often consumes rational argument. This factor would put unnecessary strains on any bilateral relationships that America is building with Mexico.

In conclusion, the U.S. should continue to employ descriptive labels that concentrate on the criminal activities of the Mexican drug cartels. Terrorism is a tactic and should not be used as a descriptive term for the cartels. To avoid the inevitable confusion and political firestorm sure to follow, if the label of "terrorism" is applied to the Mexican drug cartels, it should originate from the Mexican government. **MS**

SUGGESTIONS?

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