

Ten Tips to Obtain Your Insurance Recovery

By Daniel J. Healy and Rhonda D. Orin

Too many businesses purchase insurance and stop there, assuming that their policies will work as advertised when a claim must be filed. In truth, buying the right insurance coverage is just the first step in using an insurance portfolio to obtain coverage for a company's losses and liabilities.

When it comes time to claim coverage under a policy, insurance companies often look for ways to delay and avoid payment. This delay often comes at a time when a policyholder has suffered a loss and is in financial need. Insurance companies are particularly adept and well practiced at delay tactics and avoiding some or all of their payment obligations.

The following steps are designed to help policyholders forestall or surmount these tactics. Understanding your insurance coverage and being prepared to rely on it ahead of time, beyond purchasing the policies a broker recommends, improves the likelihood of efficient and reliable claim payments. Prepared policyholders stand on a solid groundwork for taking the next steps in pursuing a claim after a loss and, as is sometimes necessary, after a denial.

1. Be sure that the policies your business purchases match the risks your business faces.

While buying insurance may seem straightforward, you need to analyze the types of risks your business has faced and the types it will face as it evolves with technology and industry changes. In particular, cyber coverage may be a consideration if your business processes, stores or even contracts out for the processing of electronic personal or credit card information. Similarly, D&O and specialty lines for professionals or employment practices often are overlooked.

2. Make sure you get what you intended to purchase.

Make sure not only that you obtained the right policy with the right coverage forms, but that the insurance company actually delivers that policy with those coverage forms and endorsements. In

today's electronic age, a surprising number of policyholders receive their policy as an electronic file and never open it until they need it, after a loss has affected their business. Finding out in the wake of a major loss that a key endorsement is missing from the electronic file can be a serious problem, even if you otherwise received the policy you intended to purchase. Insurance companies often claim not to have policies that match the policyholder's. If the policyholder's copy is incomplete, it can create unnecessary difficulty in proving that the right coverage was ever in place, which leads to delay. On the other hand, checking these items when they come in and correcting them at the time creates an electronic record of receiving the right policy with the right coverage that insurance companies cannot credibly deny.

3. Index and organize current and past policies.

Hand-in-hand with making sure you get what you paid for, keep track of all policies that your business has purchased. Occurrence-based policies in particular have long-term value far beyond the effective date. Others before you may not have created files making the policies easy to locate. If that is the case, act now to reconstruct and document you company's historic insurance portfolio. Trying to do so under pressure of a major loss or liability creates further delay and complications, not to mention stress. Organize and index your current policies as you purchase them. If it has not been done already, index and create an archive of historical policies -- particularly occurrence-based liability policies, which provide broad coverage for claims that may still be brought today, even if purchased decades ago.

4. Complete insurance applications accurately and carefully.

Too many businesses treat insurance applications as mere formalities. Large businesses sometimes spend significant resources during renewal, working through a broker, but may still haphaz-

ardly complete the required application. Don't do this. Errors, including innocent errors, can cost you coverage you should otherwise get. If the error was made prior to policy inception, then there may be little that coverage counsel is able to do.

5. Give notice of claims early and often.

Notice of claims, even potential claims, should be provided quickly. Policyholders should consider which policies may apply to a potential claim and provide notice to all that may potentially respond -- often, more than one policy may apply. If you delay, timely notice provisions may complicate or even void coverage.

6. Challenge denials from insurance companies.

Insurance companies deny claims all too often on grounds that are not sustainable. They often use boilerplate language and reach conclusions without having the relevant facts. Policyholders should assess why it is they submitted the claim for coverage and what the insurance policy is supposed to cover. A denial should not be accepted as the final word.

7. Assemble a team.

Business policyholders generally need to involve personnel from different departments to address insurance claims and the losses underlying those claims. While the risk manager and general counsel's office intuitively make the team, others may be needed, depending on whether the claim involves operations, particular technology, financial information or other information specific to a particular department within the policyholder organization. Outside consultants may be needed as well. Conversely, certain persons may not be good candidates to participate in a claim team, depending on the loss or liability giving rise to the claim. If there is underlying litigation, counsel in that litigation is not the best counsel to pursue coverage for the litigation, for a number of reasons -- e.g., the insurance company is paying them.

8. Estimate or quantify the losses.

As early in the process as possible, track monetary losses, including funds spent, potential business interruption, defense costs or other expenses associated with the loss. Stick to the approach and numbers you use and do not let insurance companies arbitrarily re-label the categorization of your losses and expenses. Attention should be paid to policy language and, potentially, case law, in order to avoid limiting coverage unnecessarily.

9. Set a goal.

Business or organizational policyholders in particular need to set a goal for any claim they submit. Complicated claims processes, often made intentionally more complicated by insurance companies, can obscure the big picture and change the overall course of a claim. Set a goal and only modify it with after analysis.

10. Settle carefully.

Document your settlement. Clearly state what release is being given, whether it is a release of claims, policies or something

else. Negotiate with each insurance company separately and avoid trying to reach universal settlements.

These tips focus on a number of common issues that can help before a claim arises, during the claim process and after. Policyholders need to persist in their claims and not be deterred by insurance companies that have much more experience with the claim process.



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