Historic Insurance Assets

by Robert M. Horkovich

Liabilities live for decades and so do insurance policies. Asbestos, environmental pollution, lead paint, pharmaceutical side effects: many, many products and practices with unintended consequences create "long tail" liabilities (i.e., damage, real or alleged, for which people may sue decades after the original event). At the same time, most comprehensive general liability policies are so-called "occurrence based" policies, which means that they cover "occurrences" that happened during the policy period—even if lawsuits or government actions that trigger coverage are filed years or even decades later. In short, occurrence-based policies do not expire unless and until policy limits are exhausted. Moreover, the older a policy is, the less restrictive it is likely to be, in terms of both policy limits and exclusions. For damage or injury that occurred over the course of decades, old policies can be buried gold.

Today, the tasks of constructing and maintaining a record of historic insurance coverage is greatly complicated by the fast pace of merger and acquisition activity. While that pace has slowed radically in the wake of the credit crunch, companies still face the challenge of integrating the insurance assets of companies acquired in the frenetic decade preceding. According to the *Financial Times*, global mergers and acquisitions more than tripled over the past decade, rising from 9,251 in 1995 to 33,141 in 2006. If acquired companies themselves were acquirers in prior years, the challenge of integrating several generations of subsidiaries is compounded. It is not uncommon for a veteran company to hold hundreds of insurance policies that still can respond to newly emerging liabilities. To handle this complexity, companies must have systems and software in place to integrate insurance assets as they are acquired.

Several dedicated database products exist to help policyholders sort, organize and update historic liability insurance coverage. Generally, this software is used to create a database containing images of all of the company's policies—or, in cases where the original policy document is missing, images of secondary documents containing policy details. By linking to these images, the insurance database structures policy information regarding key features such as policy period, covered locations, types of coverage, limits, defense provisions, follow form provisions, exclusions, deductibles and other insureds.

Insurance database software should enable risk management to search the database and quickly pull up a list of all primary and excess policies that may respond to a particular claim against a particular corporate affiliate within a particular time period, clearly laying out each policy's per-claim and aggregate limits, endorsements, exclusions and other terms. Such information then can be used to create charts that show the whole complex picture at a glance. The ability to structure and visualize the data in this way makes it vastly easier to provide prompt notice to all insurance companies that may provide coverage; access relevant policy language while negotiating a claim; and determine the proper allocation among multiple insurance companies.

Some insurance database software is available "off the shelf," while other products are offered in conjunction with services, offered by insurance archeologists, law firms, brokerages and others, that help the risk manager identify and classify the relevant terms and provisions. Without highly specialized knowledge of insurance policy language, database construction can easily fall victim to the GIGO (garbage in, garbage out) phenomenon.

Once an organization recognizes that old insurance is a live asset, reconstructing and then maintaining the historic insurance portfolio becomes imperative. The task requires good software, policy expertise and administrative commitment. The payoff is among the rarest of corporate assets: an insurance program that consistently maximizes loss mitigation. ■

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