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Ten Insurance Tips for Corporate Counsel, Risk Managers and Executives

By Mark Garbowski


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Insurance policies often are acquired and then put in a drawer. But there are important steps that policyholders should take to help maximize the value of their insurance coverage.

Insurance is an Asset, Not a Certificate of Achievement

Many companies view the purchase of an insurance policy as something they are required to do by a regulatory agency, trade group, or business partner. Once they obtain the certificate and demonstrate compliance, their interest in the insurance ends, only to be renewed once a new certificate is needed. When a loss occurs, however, it is important to pursue the recovery of the insurance asset in a proper fashion.

When a Company is an Additional Insured on Another's Policy, Ask for a Copy of the Policy, Not Just the Certificate of Insurance

Often, a company will require its business partner to demonstrate compliance with an insurance requirement by furnishing a copy of the certificate, typically supplied by the broker. Although a commonly accepted practice, this is not satisfactory, especially when one company is an additional insured under the policy purchased by the other company.

Without the policy, when a loss occurs, an additional insured will not know where or how to give notice, what coverage is available, what exclusions might apply, what other conditions might apply, or how deductibles, retentions, and limits of insurance are allocated and calculated. This is not a good position to be in, yet it is very much routine. Companies should ask for a copy of all relevant policies from their business partners. They might not provide it willingly, but an additional insured certainly will not get it if it does not ask.

Know Where All Policies are Now, and Maintain Insurance Policies Indefinitely Under a Document Retention Policy

Because insurance policies are assets, and not just pieces of paper, it is important to maintain the policies in good order. A policy is not much use if a policyholder cannot prove that it exists or what its terms are. If a company has a document retention policy, make sure that insurance documentation is included, and that copies of policies are maintained for a long time. If a company decides to dispose of or destroy an old policy, it should be carefully reviewed for the possibility that it could respond to either a loss that occurs in the future, or, more likely, a loss that reveals itself in the future. If either possibility exists, do not get rid of it.

> *"... [a] company should begin thinking of insurance coverage when it becomes aware of the potential of a loss that might take place."*

Review New Policies as Soon as They Arrive

Depending on applicable state insurance law, an insurance company might be required to highlight certain coverage changes or reductions on renewal or replacement policies. While such disclosures are useful, they should not be relied on to inform policyholders of every relevant

"Ten Insurance Tips" continued p2

"Ten Insurance Tips" continued from p1

change in the policy, and policyholders should not assume that any change not included in the disclosure is insignificant.

A seemingly arcane change regarding the application of a deductible, for example, can have an extreme effect on the coverage provided by a policy. This type of change will often not be included in a summary of major policy changes provided by the insurance company or even an insurance broker. It is, therefore, the policyholder's responsibility to have someone review new policies when they arrive. It is better to know of policy changes when they are first implemented, when there still might be a chance to remove the change or even buy a replacement from a different company. If a policyholder waits until after a loss occurs to discover the change, it will probably be too late.

Develop Insurance Expertise Outside of Risk Management

While a company's risk management department or consultants are obviously an important and central part of its base of insurance knowledge, it should not be the places in which insurance knowledge resides. In particular, a policyholder's legal department, including any regularly retained outside counsel, should have a ready, working knowledge of the company's insurance program.

Make Sure the Insurance Team Works Together as Allies

Corporate "politics" should not have a negative impact on a company's insurance recovery. Tensions or rivalries between different departments, or among inside employees and various outside consultants, should not be allowed to get in the way of the pursuit of a company's insurance claim. The person in charge should have the responsibility of making certain that these groups work together, as allies, on behalf of their mutual employer or client: the policyholder.

Consider Insurance Coverage After Every Loss

When a company suffers a loss, of any kind, it should immediately begin to determine which insurance policies might provide coverage. In fact, the company should begin thinking of insurance coverage when it becomes aware of the potential of a loss that might take place. In addition to giving notice (as discussed below), there are some seemingly innocuous decisions that a company might make that could negatively affect coverage later on.

Provide Notice of Every Loss, or Potential Loss, as Soon as Possible

Give notice immediately, as soon as possible, after every loss or potential loss. Do not wait to determine whether the issue will be big enough to warrant a claim. Do not wait to see if a potential liability is ever pursued by a claimant. Do not defer giving notice because of a fear that premiums will increase because of that notice.

A policyholder can always drop a claim if it later determines that the matter is best handled without the insurance company's involvement, but the opposite is not necessarily the case. If a company fails to give notice on a timely basis, it could very well forfeit coverage altogether. There is almost no advantage to delaying coverage, and rarely does it outweigh the cost of either losing coverage outright, or the cost of fighting the insurance company over the timing of notice. Even if a policyholder is successful, that is a fight that is easily avoided.

Challenge the Insurance Company's Denial

It is no secret that insurance companies will often test their policyholders' resolve by issuing an initial denial for a claim whenever there is any remotely plausible basis for doing so. Too often, this gambit succeeds when the policyholder reads the denial, affirms its seeming "plausibility," and resigns itself to handling the loss without insurance.

Do not fall into this trap.

First, a policyholder should undertake an independent evaluation of its coverage claim. It is not enough to read the sections quoted by the insurance company. It is rare for the insurance company to misrepresent those provisions, but they also rarely tell the entire story. The policyholder should use its resources in risk management and legal expertise to review the entire policy, looking for sections that might create coverage despite the provisions relied upon by the insurance company. It should write back, explaining why it is not taking "No" for an answer. Sometimes one, or a few letters, is enough pushback to get the insurance company to reconsider.

When Responding to Insurance Company Information Requests, Never Say "No"

Just as a policyholder should never accept "No" from an insurance company, it should in turn almost never say "No" when responding to the insurance company's requests for cooperation and information. That does not mean a policyholder has to fulfill every request exactly as it is presented.

"Ten Insurance Tips" continued p4

"Ten Insurance Tips" continued from p3

Look for creative ways to offer the information the insurance company needs, while maintaining all necessary confidentiality and minimizing costs. Ask the insurance company to sign confidentiality agreements where appropriate, and be careful of sharing privileged information in circumstances where doing so might constitute a waiver of the privilege. Be sure to check with counsel for the law of the applicable jurisdiction. Refusing to provide privileged information under such circumstances should be justifiable under the cooperation clauses of the policy. In contrast, a simple denial of all or most requests provides the insurance company with a simple basis for denying a claim.

Conclusion

Insurance coverage is an important corporate asset. When companies treat their policies appropriately, they are more likely to provide the value that was intended at the outset.

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