Policyholders often encounter coverage-defeating pitfalls between the time that claims are asserted against them and the time they collect insurance dollars. Understanding and avoiding these pitfalls makes all the difference in winning timely and sufficient payment of claims from the insurance company. Following are four basic pitfalls and suggestions for avoiding them.

#1 Late Notice
Prompt notice is essential to proper claims handling. Insurance companies’ late notice defenses have been upheld in several jurisdictions.

Standards for late notice vary from state to state. New York has held that notice is a condition precedent to coverage; others require the insurance company to show affirmative prejudice. As a rule, however, insurance companies will argue that notice delayed is coverage denied.

#2 Inadequate Description of the Claim
Providing the insurance company with a description of the claim is vital. The description should be succinct and complete. A copy of the complaint or claim letter is often appropriate. Characterization of the complaint or the claim letter may or may not be appropriate depending upon the characterization. Use of the Acord form will provide a simple straightforward description of the claim. This is a form that is frequently used to summarize information regarding a claim. Policyholder counsel can provide a copy of the Acord form and assist in preparing it.

#3 Failure to Respond
Following the submission of a claim, the policyholder will receive any of several responses from the insurance company. Responses range from simple acknowledgements of receipt of claims to detailed requests for information about the claims. These requests often rival the most burdensome and oppressive set of interrogatories and document demands that have ever been served in any lawsuit. The policyholder may also receive a responding letter from the insurance company that contains numerous descriptions as to why there is no coverage. On the other hand the policyholder may get what it paid for—a defense and payment of indemnity.

The policyholder should respond to all letters from insurance companies. Counsel can assist the policyholder in providing a response that contains the information to which the insurance company is entitled while not acceding to burdensome requests from the insurance company for information.

#4 Providing Unwarranted Discovery
Policyholders should be wary of insurance companies that use the claims handling process to procure free discovery before the policyholder has sought independent legal advice. Long, complicated, detailed requests for information should be viewed with a reasonable degree of suspicion. This is especially true if the insurance company has no intention of acknowledging coverage or settling a claim. If the insurance company disclaims coverage, it becomes an adversary of its policyholder—there is no “common interest—and is not entitled to communications with the policyholder’s defense counsel.

Insurance companies are often looking for reasons to deny claims. The policyholder’s description of the claim can either set forth a legitimate
claim for coverage or assist the insurance company in denying coverage. For example, suppose you receive a PRP letter for contamination arising out of a chemical spill at a plant that has resulted in groundwater contamination. There is a world of difference between (a) a notice letter from the EPA stating that the policyholder is being threatened with legal action and (b) a letter from the EPA requesting the policyholder to clean up a chemical leak at the plant. Most CGL insurance policies have “owned property exclusions.” Insurance companies may respond to the second description with a letter stating that there is no coverage. The first description places the claim within the four corners of the policy.

**Remember Who Your Friends Are**

It is important for policyholders to analyze their claims and insurance policies. With the knowledge gained from this analysis, policyholders can provide effective notice to the insurance company of the intention to obtain payment on a claim. Even when they do everything right, policyholders should be prepared to counter denial of claims with information showing that the claims are within the policies. Policyholders should be selective in choosing the information that they provide. The policyholder should be especially sensitive to the adversarial relationship created by the insurance company that denies coverage on a valid claim. ■