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# Ten Insurance Tips For Maximizing The Value Of Insurance Assets

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Insurance policies often are acquired and then put in a drawer. Sometimes they are not even maintained anywhere. But these policies are valuable assets – and like most assets, they must be managed actively if their value is to be fully realized. Here are ten steps policyholders should take to maximize the value of their insurance coverage.

**1. Recognize That Insurance Is An Asset, Not A Certificate Of Achievement**

Too often, insurance policies are viewed primarily as a begrudged if necessary expense. Many policyholders 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, to be renewed only should they be called again to prove compliance.

When a loss occurs, however, it is important to pursue insurance recovery systematically and aggressively. Doing so requires planning and organization – much of which should take place before any loss occurs.

**2. When Your Company Is An Additional Insured On Somebody Else's Policy, Demand A Copy Of The Policy, Not Just The Certificate Of Insurance**

When your company is an additional insured under a policy purchased by another company, you should take all reasonable steps to obtain a copy of the policy. A certificate is a weak substitute.

The first thing this does is establish that the policy exists. A certificate is not proof of coverage. While fraudulent certificates are rare, certificates whose terms are incomplete or that do not match the contents of the policy are all too common.

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Obtaining the actual policy also allows you to check that your company was properly added as an additional insured. This is always important to review, both for policies in which your company is specifically listed as an additional insured and for those that cover your company by means of a blanket provision adding all parties as additional insureds where it is contractually required.

Finally, obtaining the policy puts you and your company at an advantage when a loss or claim occurs. With the policy in hand, an additional insured will know where and how to give notice, what coverage is available, what exclusions might apply, what other conditions might apply, and how deductibles, retentions, and limits of insurance are allocated and calculated. Not having the policy puts you completely at the mercy of your contractual partner for all of these issues. No matter how strong the relationship, their interests and yours are not identical. Companies therefore should ask for a copy of all relevant policies from their business partners.

**3. Know Where All Policies Are Now, And Maintain Insurance Policies Indefinitely Under A Document Retention Policy**

If a company has a document retention policy, it must make certain 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, that policy should first be carefully reviewed for the possibility that it could respond to a loss that either occurs in the future or, more likely, reveals itself in the future. If either possibility exists, do not get rid of it.

Even claims-made and reported policies can sometimes be implicated by claims that arise years after their term ends, usually because the new claim is interrelated to one made during the policy period or arises out of circumstances that were reported during the policy period.

The more complex your insurance program, the more organized your policy retention system should be. If you have multiple lines of coverage, for example, a database or at least a spreadsheet listing all policies should be maintained.

**4. Review New Policies As Soon As They Arrive**

In most circumstances, it is the policyholder's responsibility to review new policies when they arrive. Does the policy match the certificate, or correspondence between you and either the insurance company or your broker? Are there significant changes from last year's policy? If there are any problems, it is best to catch them as soon as you get the policy, when there still might be some opportunity to address any discrepancies. Even if the insurance company refuses to issue a revision, endorsement, or clarification, you will have built a record and shown that you did not waive anything. In some instances there might even be an opportunity to cancel the policy and purchase from an alternative vendor.

If you do not catch the problem until a claim arises that inevitably implicates the unexpected policy provision, you will be left arguing that your broker or insurance company had a duty to advise you of these issues. While such arguments sometimes work, courts often look unfavorably on parties who arguably had an opportunity to discover the problem themselves but failed to take action.

Finally, depending on the applicable state insurance law, an insurance company might be required to highlight certain cov-

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

**5. Develop Insurance Expertise Outside of the Risk Management Department**

While a company's risk management department or consultants are obviously an important and central part of its base of insurance knowledge, risk managers should not be the only people with knowledge of insurance. 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 and should be able to assess both policy provisions prior to purchase and any coverage defenses an insurance company throws up in response to a filed claim.

**6. Make Sure The Insurance Team Works Together As Allies**

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 responsibility for making certain that these groups work together, as allies, on behalf of their mutual employer or client: the policyholder.

**7. Consider Insurance Coverage After Every Loss, And Give Notice of Every Potential Loss Or Claim As Soon As Possible**

When a company suffers a loss or is faced with even a potential claim 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 whenever it becomes aware of a potential loss.

Then, it is important to give notice immediately so as not to run afoul of "timely notice" provisions requiring the policyholder to give notice within a fixed time period – sometimes as short as a week – once a potential loss or liability becomes manifest. 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 notice, and rarely does it outweigh the cost either of losing coverage outright or of fighting the insurance company over the timing of notice. Even if a policyholder is successful, that is a fight that is easily avoided.

**8. Think About Insurance During Mergers, Spin-Offs and Acquisitions**

In any merger or acquisition, both parties should devote specific attention to insurance issues. This goes back to the idea that insurance is an asset. The general rule is that insurance should go with the covered risk, but this rule is neither universal nor always easily executed.

In some instances, it might be difficult to transfer insurance assets that covered both the division being sold or acquired and other parts of the seller's operations. Sometimes the insurance company will have a right to withhold approval for the transfer. In such cases, alternative risk transfer arrangements should be made, and each transaction must be analyzed and handled on an individual basis.

**9. 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. When that occurs, a policyholder should undertake an independent evaluation of its coverage claim. 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.

**10. 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. 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 policies represent an important asset. When companies treat their policies appropriately, those policies are more likely to provide the value that was intended at the outset.

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