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Tips For Maximizing the Value of Insurance Assets

By Mark Garbowski

Too often, insurance policyholders view the purchase of a policy as a box to check — something they are required to do by a regulatory agency or business partner. Once they obtain the certificate and demonstrate compliance, their interest in the insurance ends. But these policies are valuable assets and must be managed actively if their value is to be fully realized. In particular, when a loss occurs, it is important to pursue insurance recovery systematically and aggressively. Doing so requires planning and organization — mostly before the loss occurs. Below are valuable tips to help you maximize the value of your insurance portfolio.

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, take all reasonable steps to obtain a copy of the policy. This will establish that the policy exists. A certificate is a weak substitute and is not proof of coverage. While fraudulent certificates are rare, certificates whose terms are incomplete or do not match the contents of the policy are all too common.

Obtaining the actual policy also allows you to check that your company was properly added as an additional insured. Further, obtaining the policy puts you and your company at an advantage when a loss or claim occurs. With the policy in hand, you 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 at the mercy of your contractual partner for all of these issues.

Know Where All Policies Are Now, and Maintain Them Indefinitely Under a Document Retention Policy

If your company has a document retention policy, make certain that insurance documentation is included, and that copies of policies are maintained for a long time. If you have multiple lines of coverage, maintain a database or at least a spreadsheet listing all policies.

If you are thinking about disposing of an old policy, first review it carefully 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.

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

Review New Policies as Soon as They Arrive

Usually, it is the policyholder's responsibility to review new policies when they arrive. Does the policy match the certificate, or correspondence between you and the insurance company or your broker? Are there significant changes from last year's policy? It is best to catch any problems 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 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 change in the policy, and policyholders should not assume that any change not included in the disclosure is insignificant.

Develop Insurance Expertise Outside of the Risk Management Department

While your company's risk management department or consultants are a central part of its base of insurance knowledge, your legal department, including any regularly retained outside counsel, should have a 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.

Consider Insurance Coverage After Every Loss, and Give Notice of Every Potential Loss or Claim as Soon as Possible

When your company suffers a loss or is faced with even a potential claim of any kind, begin immediately to determine which insurance policies might provide coverage. Then give notice immediately so as not to run afoul of "timely notice" provisions requiring the policyholder to give notice within a fixed time period. 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 pursued. Do not defer giving notice because of a fear that premiums will increase because of that notice.

If you fail to give notice on a timely basis, you could very well forfeit coverage altogether.

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, undertake an independent evaluation of your coverage claim. Review the entire policy, looking for sections that might create coverage despite the provisions relied upon by the insurance company. Then write back, explaining why you are 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. 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

Isaac Bashevis Singer, the Nobel laureate in literature, was fond of saying that a writer needs a whip. So does an insurance claim. When it's time to seek recovery, make sure that you hold the whip hand.
