



## Risk Managers' Motto Is To Be Prepared

It's vital to have access to insurance policies, company's contracts

By **ALEXANDREA L. ISAAC**

The effects of the economy have been felt across all businesses and industries over the past two years. As a direct result of businesses cutting their budgets and personnel, the responsibilities of employees have grown.

If you are a human resources professional, you might now be responsible for handling your company's risk management. If you have always been your company's risk manager, you likely now have additional tasks to address. Whether you are new to the area of risk management or have made risk management your career, this article will provide you with a critical checklist to ensure you are maximizing your coverage for insured risk and transferring that risk when possible.

### Pre-Litigation Procedures

When some think of the role of a risk manager, they often focus too narrowly on the responsibility to attend to litigation when the company is sued. However, the work a risk manager does prior to the receipt of a lawsuit will assist him or her tremendously in the event of future litigation.

In this respect, the foundational element of all risk management is to be organized. As a risk manager, you should not only be aware of all past and present insurance policies purchased by your company, but you should also have complete copies of these policies readily available to you. Do not assume that your insurance company, agent or broker will have these documents should you need to refer to them.

### Organize Policies

Obtaining copies of old policies is another way for a risk manager to prepare for future

litigation and save a great deal of company time and money. As most companies realized with the surge of asbestos litigation, it is vital to have copies of insurance policies going back as far as possible.

As you may be aware, courts have determined that bodily injury resulting from asbestos exposure was deemed to be on-going causing what is known in the insurance industry as a "long-tail claim" and, potentially, a "continuous trigger" of coverage.

As such, if Mr. Smith was exposed to asbestos in 1960, but brought his bodily injury litigation against your company in 2000, all of the liability policies issued to your company over that 40-year term may be applicable. Asbestos is just one example of product liability. No one can predict what the next long-tail claim might be or what services, business or industries it may impact. However, a risk manager who is able to put all its potentially applicable carriers on notice of litigation will be the most successful at finding coverage and transferring risk.

### Contracts, Record Retention

In addition to having your insurance policies accessible, it is important to retain copies of contracts entered into by your company. Most critically, you should have records of contracts wherein the company



Alexandrea L. Isaac

has either: 1) transferred your risk to another entity, typically by an insurance requirement that your company is added as an additional insured on another's insurance policy and/or through indemnification language; or 2) assumed the risk of another entity. Following your receipt of these contracts, you should: 1) confirm that your company has in fact been added onto the insurance policy of the party you have contracted with; and/or 2) confirm that the contracting party has been added to your insurance policy. These steps to confirm the policy complies with the terms of your contract may prevent litigation in the future.

Risk managers have routinely relied on the certificates of insurance as sufficient "proof" that they have been added as an additional insured on another's policy. This is not enough. Certificates of insurance do not govern or control the coverage you may or may not be afforded under a policy. The *only* way to have a true understanding of your coverage under a particular policy is to obtain a copy of the policy and read it. If there is *anything* within that policy that you do not understand, it is critical that you seek out the advice of your broker or coverage counsel.

A risk manager that has instituted policies and procedures for record retention for the company's insurance policies and contracts will be prepared in the event of litigation.

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*Alexandrea L. Isaac is an associate at Saxe Doernberger & Vita P.C. in Hamden. She has extensive experience in the insurance industry and has focused her practice on representing commercial policyholders in insurance coverage litigation.*

# BUSINESS



# LITIGATION

## **After Suit Is Filed**

Immediately upon receipt of any litigation, you must notify all potentially applicable insurance carriers, including your excess carriers, that you are tendering your demand for defense and indemnity. Remember that it is possible for more than one policy to apply. Consider all lines of coverage as well as any coverage the company may have through their additional insured status or by way of an indemnification clause of a contract. Your ability to spread and transfer risk will reduce or eliminate your company's liability.

## **Understand Insurer's Position**

After you have tendered your claim for coverage to your insurer(s), you will likely

receive their written coverage position in response. A denial or reservation of rights letter should be scrutinized. As the insured, you should have a clear understanding of the insurer's position. While you might be satisfied at first because the insurer has agreed to defend you, if they have reserved their rights, you should understand how that may affect your company in the future. This is another juncture where the insight of coverage counsel can prove highly beneficial.

## **Stay Involved**

A risk manager who has the proper team to evaluate and respond to an insurer's coverage position will be better prepared to hold the insurer accountable to its obligations. It is equal-

ly important to understand your insurer's position throughout the course of the litigation. If at any time the insurer issues a subsequent coverage letter, the same level of scrutiny should be taken. Diligence by a risk manager during litigation requires continued dialogue with both your defense attorney and the insurance company so that you have a working understanding of the litigation as well as any and all potential risk that may fall on your company.

While it may not be possible in every scenario to eliminate risk, having the proper policies, procedures and team in place will assist you in your role as risk manager through all stages of litigation. By taking these steps, you will be able to manage and transfer risk successfully. ■