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COUNSEL TO GREAT COMPANIES

Non-Profit Insurance A-Z

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OVERVIEW

- Panel Members
- Types of Insurance Policies
- Benchmarking-How Much Coverage?
- Maintenance of Insurance
- Notice
- Maximizing Claims

Presenter: Selena Linde



Selena Linde is a Partner in Perkins Coie's Insurance Recovery Practice and is a primary author and editor of the first edition of Association of Corporate Counsel's Policyholders Primer on Insurance. Ms. Linde has been honored as one of twenty-five worldwide recipients of *Business Insurance's* Women to Watch, one of eleven National Insurance Stars and one of the top 150 Women Litigators by *Benchmark Plaintiff*.

Ms. Linde has recovered more than a billion dollars for her clients and has an active trial practice representing policyholders in complex insurance coverage cases throughout the country and an equally active arbitration, mediation, and counseling practice. Selected representations include:

- Lead Coverage Counsel for Hospitality Company in Puerto Rico (Property and Business Interruption claims stemming from Hurricane Maria)
- Lead Coverage Counsel for Hospitality Company (Data/Privacy and Property claims)
- Lead Coverage Counsel for Residential Capital (E&O and D&O claims related to packaging of mortgage backed securities)
- Lead Coverage Counsel for NorthWestern Energy (CGL, D&O, Property, and EPL claims)
- Co-lead Counsel for Motors Liquidation Trust (CGL claims related to historical asbestos and environmental liability for pre-BK General Motors)

Join Ms. Linde's LinkedIn network for updates and articles on insurance coverage topics. She can be reached directly at (202) 654-6221 or SLinde@perkinscoie.com

Presenter: Catherine Del Prete



Catherine Del Prete is a Counsel in Perkins Coie's Insurance Recovery practice. Ms. Del Prete represents corporate policyholders in coverage disputes and litigation. She has represented clients in disputes over product liability, environmental contamination, employee theft and other claims. She also counsels and advises clients on coverage audits, policy renewals and policy language.

Highlights of Catherine's experience include obtaining a favorable verdict in a ten-day bench trial in D.C. Superior Court and her ongoing representation in a case involving an automotive products manufacturer in North Carolina state court seeking coverage for thousands of long-tail asbestos and benzene products liability claims.

Catherine can be reached directly at (310) 788-3253 or CDelPrete@perkinscoie.com

Presenter: Keith Mulvihill



Keith is a Client Executive in Lockton's Washington, DC office and joined in 2013 to help grow Lockton's Nonprofit Practice. Keith has over fifteen years' consulting experience in human capital and risk management strategy. Designations held include the Chartered Property Casualty Underwriter and Enterprise Risk Management. Keith and his wife Nicole reside in Leesburg, VA with their three children.

Keith can be reached directly at (202) 414-2656 or KMulvihill@lockton.com

Presenter: Tom Casey



Tom Casey serves as Vice President of Legal Affairs. In this role, Casey's primary focus is the portfolio of RILA's "corporate legal health" work including contract review, antitrust review and compliance, staff legal training, intellectual property rights, our privacy audit, web disclosures and legal compliance, CLE accreditation for our conferences and meetings, etc.

Casey joined RILA after 13 years of trade association experience working as assistant general counsel, deputy general counsel, and then general counsel at two different trade associations, American Farm Bureau and the Institute of Scrap Recycling Industries, where he focused almost exclusively on transactions, intellectual property, corporate governance, and antitrust compliance. Casey is also a former prosecutor, earned a Bachelor's Degree in Finance from JMU, and a law degree from Widener School of Law. He is admitted to practice law in Maryland and the District of Columbia.

Learn more and connect with Tom on LinkedIn at <https://www.linkedin.com/thomasfcasey/>

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Types of Insurance Available for Non-Profits

Types of Insurance

- First Party v. Third Party
- Occurrence v. Claims Made
- Standard v. Specialty Coverage

Types of Insurance

- Commercial General Liability
- Property
- Directors and Officers
- Employment Practices Liability
- Errors & Omissions/
Professional Liability
- Fidelity
- Fiduciary
- Cyber Risk/Privacy
- Workplace Violence
- Event Cancellation
- Special Events
- International

Commercial General Liability Policies

- Most policyholders purchase general liability insurance policies
- General liability insurance coverage responds to claims against the policyholder alleging liability for “bodily injury” or “property damage” and for “personal and advertising injury”
- It is the basic coverage that responds to tort actions against the policyholder – products liability, premises liability, etc.

Commercial General Liability Policies

- Broad duty to defend
- May also provide coverage for:
 - Intentional conduct
 - Punitive damages
 - Class actions
 - Patent/Trademark
 - Counterclaims
 - Employment claims

Some Current Issues for Commercial General Liability Coverage for Bodily Injury and Property Damage Claims

- Bodily injury claims posing as consumer fraud, to avoid restrictions on class actions (e.g., cell phone radiation cases)
- Aggressive use of the pollution exclusion to deny coverage for non-environmental toxic exposures
- Global warming litigation
- “Junk” e-mails and faxes
- Robocalls

Property Policies

- First-party property policies protect a policyholder's place of operations and inventory and provide coverage for lost or damaged property.
- “All Risk” covers losses to real property caused by any peril not expressly excluded.
 - Once a policyholder shows that it has suffered a loss, the burden of proof shifts to the insurer to show that the loss is not covered.
- “Named Peril” covers only those perils expressly named.

Property Policies (cont'd)

- First-party property policies may also provide coverage for:
- Economic losses resulting from the interruption of your business due to physical loss of or damage to your property (“business interruption”)
- Economic losses resulting from the interruption of your business due to physical loss of or damage to the property of your buyers or suppliers (“contingent business interruption”)
- The increased, above-normal cost of business operations resulting from an insured peril (“extra expense”)

Directors and Officers (“D&O”) Policies

- D&O insurance coverage responds to claims against the policyholder and its Directors and Officers for allegations of negligent acts, errors and omissions.
- Coverage is typically written on a claims-made basis, meaning that the policies are only triggered when a claim is made against the Insured.

D&O Insurance: Sides A & B Coverage

- “Side A Coverage” covers directors’ and officers’ liabilities for which the corporation cannot indemnify them.
 - **Example**: Side A covers a director’s defense costs when company is insolvent.
- “Side B Coverage” covers the company for "Loss" for which the company is required to indemnify directors or officers for a claim.
 - **Example**: Side B covers an indemnified director’s defense costs if the director is sued by a donor alleging misuse of funds.

D&O Insurance: Side C Coverage

- “Side C Coverage” provides the corporate policyholder with coverage for liability arising out of a defined group of claims filed directly against the corporation.
- **Example**: Side C covers a nonprofit company’s defense costs in a state Attorney General’s action against the company, even if no Directors or Officers are named in the suit.

Directors and Officers Policies

- **D&O policies may also provide coverage for:**
 - A subpoena issued pursuant to a state attorney general investigation
 - A DOJ civil investigative demand and subpoena
 - A grand jury subpoena
 - An administrative subpoena from one state consumer protection agency and a civil investigative demand from another
 - Fraud and intentional conduct
 - Special litigation committee costs

Employed Lawyers Policies

- Coverage for claims alleging acts, errors, omissions, and negligence of lawyers employed by the company *and acting in such capacity*
- Specific definitions of who is covered and in what capacity
- Typically claims made policies

Employment Practices Liability (“EPL”) Policies

- Employment Practices Liability coverage responds to a broad range of employment claims, including:
 - Wrongful termination
 - Failure to promote
 - Employment-related defamation
 - Harassment (including sexual harassment, hostile work environment)
 - Discrimination

Fiduciary Policies

- Coverage for claims alleging violations of ERISA obligations.
- ERISA permits fiduciaries to be held personally responsible for the mismanagement of employee benefit plans
 - Not limited to retirement plans: includes virtually all employee benefit plans (for example, health, life, profit sharing, disability, leave)

Fidelity/Crime Policies

- Insure against losses of money, securities or inventory due to “employee dishonesty”
- Policies contain a number of related coverages
 - Forgery
 - Computer fraud
 - Computer theft
 - Data extraction
 - May offer broad coverage for investigation costs

Errors and Omissions/Professional Liability Policies

- Claims Made
- Protect the company from claims of liability for an act, error, or omission in rendering of a **service**
- Definition of professional services is critical
- Coverage grants vary widely

Media Liability Policies

- Specialized type of errors and omissions coverage
- Protects authors, publishers, broadcasters, and others for claims alleging defamation, invasion of privacy, copyright infringement, and plagiarism
 - Typically written on a named peril basis: the claim allegations must be identified specifically in the policy

Cyber Risk/Privacy Policies

- Coverage Grants Vary Greatly
- “First-Party” Coverage:
 - Losses due to destroyed or damaged data; data restoration
 - Business Interruption
 - Extortion demands
- “Third-Party” Coverage:
 - Privacy Liability
 - Unauthorized disclosure of confidential information
 - Costs to investigate breaches, satisfy notification obligations, defend against regulatory proceedings

Workplace Violence Policies

- Coverage for workplace violence incidents
- Often include coverage for hiring of security consultants, PR experts, business interruption expenses, medical and mental health expenses of victims/witnesses

Event Cancellation Policies

- Insures against loss arising out of the cancellation, interruption, or postponement of a covered event
 - Covered event examples: earthquakes, floods, fires, power failure, damage to the leased/rented venue, issues with public transportation/roads leading to venue
- Typically cover insured's out-of-pocket costs prior to cancellation, interruption, or postponement
- Coverage for lost profits and revenues, provided they are established with reasonable certainty
- Vary greatly from policy to policy
- Compare with Special Event Policies

Special Event Liability Policies

- Events your company produces/sponsors/hosts may not be covered by other insurance policies
- Special Event Policies provide coverage for claims arising from the event, including:
 - Bodily Injury
 - Property Damage
 - Liquor Liability
 - Event Cancellation

International Policies

- Coverage for employees, board members, executives when traveling abroad
- Coverages vary greatly (bodily injury, property damage, kidnap/ransom, auto)
 - **Example:** Employee travels to Spain on company business and is injured. The employee requires emergency medical care. International insurance coverage could cover this.

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Benchmarking – How Much Coverage Is Needed?

Benchmarking

- Advisen is the leading 3rd party provider of benchmarking but some brokers have internal benchmarking capabilities
- Benchmarking is just a starting point towards a well-informed limit decision
- Other factors for consideration include:
 - Mission
 - Risk tolerance
 - Board profile
 - Media and litigation posture

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Maintenance of Insurance and Contracting Insurance Issues

Insurance Requirements in Non-Profit Contracts

- Requirement to procure or maintain certain insurance
- Requirement to add other party as an “additional insured” on your own policies
- Analysis required of the insurance requirements both for your company and the other party

Requirement to Procure or Maintain Certain Insurance

- Ensures source of recovery for claims against other party
- Some assurance of financial stability of the other party
- Often used in conjunction with an indemnity requirement
 - Contractual liability coverage
 - Insurance increases likelihood there will be something to recover under the indemnity

Maintenance of Insurance Provisions

- Minimum “A.M. Best” Ratings
- Who Pays?
- Types of insurance required
- Priority: Primary and non-contributory, excess only
- Waiver of subrogation
- Notice of changes/cancellation; who is responsible
- Certificates of Insurance Endorsements
- Claims under insurance, deductibles
- Coverage required does not limit liability or indemnification requirements
- Additional insured status
- Does indemnification go first?

A.M. Best Ratings/Who Pays

- “During the term of this Agreement, Vendor shall obtain and maintain, at its expense, the following insurance coverage purchased from an insurer(s) rated A+(VIII) or better by A.M. Best”
- Who is A.M. Best?
- What does A+ (VIII) mean?
- What is a good enough rating?
- Who pays?

What Types of Insurance May Be Required

- Common types of insurance that contracts may require to be maintained, or provide additional insured status:
 - CGL, Umbrella, Auto Liability, Professional Liability, Privacy/Data Breach, Workers Comp, Fidelity
- Particular contracts may require other types
 - Examples: Property insurance (leases), Workplace Violence/Crisis policies
- Some exposures not covered by standard insurance (e.g., patent infringement)
 - Focus on other methods of risk transfer

What Types of Insurance May Be Required

- **BE SPECIFIC**
 - A.M. Best Rating
 - Who Pays?
 - Types of Insurance
 - Coverage lines, limits, occurrence/claims made, additional coverages, form numbers, etc.
 - How long can you report?
 - No vague language/options not to purchase

Insurance Required

- **Simply naming types of insurance coverage may not be sufficient**
 - Policy may have exclusions that affect the particular exposures you wish to guard against
- **Different endorsements require different causal relationships between the work under the contract and the alleged harm**
 - There may be exclusions applicable only to additional insureds
- **Amount of coverage**
 - Consider how impacted by other claims party may face
 - What happens if party buys less (or more) coverage than required by the contract?

What is wrong/missing with this example?

Vendor will maintain in full force and effect during the term of this Agreement:

- a) Commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, “broad form” property damage, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence;
- b) Auto liability insurance coverage with coverage limits of not less than \$1,000,000 per occurrence for bodily injury and property damage;
- c) Workers compensation insurance as required by law in the state where the services will be provided with coverage limits of not less than \$1,000,000 per accident and employee; and
- d) Umbrella (excess) liability insurance on an occurrence form, for limits of not less than \$1,000,000 per occurrence; (need for less depends on scope of work).

Maintenance of Insurance Provisions

Required Coverages. During the term of this Agreement, Vendor shall obtain and maintain, at its expense, the following insurance coverage purchased from an insurer(s) rated A+(VIII) or better by A.M. Best:

- a) Commercial General Liability (including products and completed operations, personal and advertising injury, and contractual liability coverage), written on an occurrence form with minimum limits of \$1,000,000 each occurrence, and \$2,000,000 in the aggregate.
- b) If Vendor's employees enter Client premises, Workers' Compensation Insurance with statutory limits and Employers' Liability (Stop-Gap Liability) insurance with minimum limits of \$1,000,000; Automobile Liability Insurance with \$1,000,000 coverage limits for each accident, including owned, non-owned and hired vehicles, and \$2,000,000 in the aggregate (only needed if driving is part of scope of work; limits can be modified for individuals/small companies).
- c) Professional Liability Insurance covering acts, errors and omissions in the performance of this Agreement with minimum limits of \$2,000,000 each claim. Such insurance shall include coverage for claims of infringement of copyrights, trademarks, trade dress and misappropriation of trade secrets. Such insurance shall be maintained to allow reporting of claims for at least 3 years after this Agreement terminates.
- d) Network Security & Privacy Liability Insurance with minimum limits of \$2,000,000 each claim. Such insurance shall cover liability or governmental investigations resulting from (i) the loss, theft, or disclosure of Confidential Information or personal non-public information of any User, (ii) the unauthorized access to, use of, or tampering with Vendor's computer systems, including denial of service attacks or inability of an authorized third party to gain access to services, and (iii) the introduction of a computer virus or malicious code into, or otherwise causing damage to, a computer, computer system, network, or similar computer related property and the data, software, and programs thereon. Such insurance shall be maintained to allow reporting of claims for at least 3 years after this Agreement terminates.

Priority of Insurance

- “Client and its affiliates shall be named additional insureds on a primary and non-contributory basis, and the policy shall include a waiver of subrogation against Client, its affiliates, and their respective employees, directors and representatives.”
- Primary and non-contributory
- Excess only
- Priority between different lines of insurance is addressed by “other insurance” clauses and state law addressing conflicts between them

Waiver of Subrogation

- Prohibits an insurance company from recovering the money they paid from a negligent third party
- Insurance company would otherwise “step in the shoes” of the policyholder
- Two types: Scheduled/Blanket
- Ensure it extends to affiliates, employees, directors, representatives, etc.
- Increase in premium possible

Notice of Changes/Cancellation

- “Policy limits may not be reduced, terms changed, or policy canceled with less than thirty (30) days' prior written notice to Client. Vendor shall ensure that any of its agents, representatives, subcontractors, and independent contractors comply with the above insurance requirements.”
- Certificate of Insurance
- Endorsements

Proof of Insurance: Certificates of Insurance/ Endorsements/ Full Policy

Prior to the commencement of any work under this Agreement, and promptly upon renewal of any required insurance policies during the term of this Agreement, Vendor will provide a Certificate of Insurance and copies of any applicable endorsements evidencing the foregoing coverage. If requested by Client, Vendor will provide full copies of insurance policies within 15 days of Client's request.

What is wrong/missing with this example?

Insurance

- Vendor shall maintain adequate and sufficient insurance to cover all potential losses to the Client under this Agreement. The Client shall be named as an additional insured under such policies, with evidence of such insurance provided to the Client within 30 days of the signing of this Agreement. All policies must contain a waiver of subrogation. Vendor's insurance carrier shall agree in writing to provide the Client with thirty (30) days' notice of cancellation or material change to coverage.

How are Insurance Claims Handled?

- **Deductibles:**
 - “Should an insurance claim become necessary under this contract, Vendor shall have sole responsibility for the payment of any deductible.”
- **Defense?**
- **Claims against the carrier?**

Limitations on Liability or Indemnification?

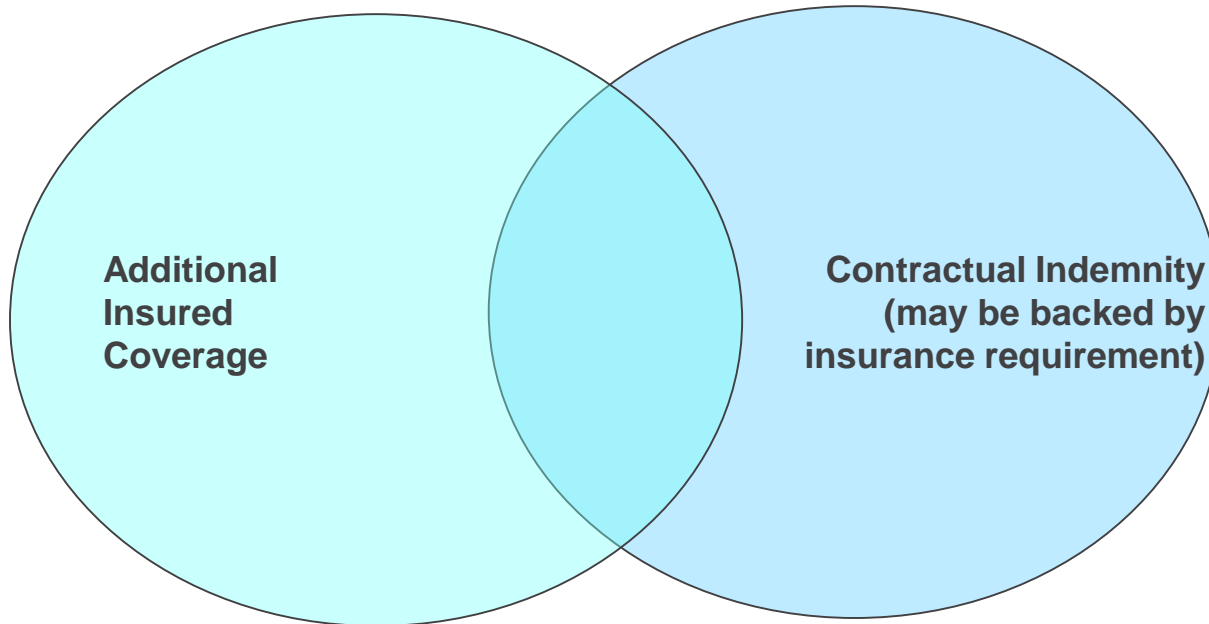
- Explicitly state that the coverage you require does not limit the other party's liability.
- “Vendor’s maintenance of such insurance shall in no way limit its liability under this Subcontract, including, but not limited to, any indemnification obligations under [Insert Sections]. Vendor’s breach of this Section shall result in damages of the limits of such insurance coverage that should have been provided or maintained.”

What is Additional Insured Status

- Other party is granted direct rights as an “additional insured” under the other party’s insurance
- The additional insured can notify the insurance company and access the coverage directly, without the need to make a claim against the other party
- A key benefit is access to the duty to defend under the insurance coverage

Additional Insured Coverage and Indemnity Agreements

What's the difference?



Creating Additional Insured Status

- Requirements set out in contract
- But the insurance policy must also support the additional insured status, often by endorsement
 - Specific endorsement
 - Blanket endorsement

Common Missteps in Creating Additional Insured Status

- **Misidentifying the party to be included as additional insured**
 - Misnaming in specific endorsement
 - Failing to meet requirement of blanket endorsement (e.g., work started before there is a “written contract”)
- **Incorrect description in the contract itself**
 - Wrong entity identified as the party to be named (e.g., contracting with parent but subsidiary performing the work)
 - Wrong insurance listed as required
- **Sometimes courts will reform obvious mutual mistakes, but better to list correctly**

Scope of Coverage: Current ISO Forms

- **ISO: Insurance Services Office**
 - Revised standard CGL policy forms as of April 1, 2013
 - Additional Insured Endorsements
 - Insured Contract Definition Endorsement
 - Primary and Noncontributory Other Insurance Endorsement

Scope of Coverage: Current ISO Forms (cont'd)

- **Owners, Lessees, or Contractors**
 - “*To the extent permitted by law*”
 - No broader than contract requires
 - Insurance limits are capped at contract requirements
- **Blanket Additional Insureds**
 - Coverage for upstream suppliers/ contractors

Scope of Coverage: ISO Forms (cont'd)

- **Insured Contract Definition Endorsement**
 - Limits “Insured Contracts” to extent the named insured’s assumption of tort liability is permitted by law
 - Restricts ability of indemnitee to access insurance coverage
 - Request copies of insured contract endorsements

Avoiding Pitfalls

- **List details of coverage required**
 - Minimum limits
 - Specific type of coverage, or even particular policy form
 - Presence of desired coverage, or absence of certain exclusions
- **Get copies of the policies, or at least endorsement – certificates of insurance are not enough!**
 - Updates at renewals
- **Actual insurance rights vs. mere claim for breach of contract for failing to obtain proper insurance**

Who Goes First

- With multiple lines of insurance, and indemnification, there may be disputes as to which goes first
- Disputes may arise as between relative priority of insurance and indemnify, or different lines of insurance

Maintenance of Insurance/Indemnification Clauses – Sample Vendor Contracts

Indemnification

Vendor agrees to indemnify, defend and hold harmless Client, its officers, directors, volunteers, employees, contractors and agents, from any and all claims, losses, damages, liabilities, judgments, or settlements, including reasonable attorneys' fees, costs and other expenses, incurred by the Client on account of any act, omission or breach of this Agreement or arising in any way from services performed by Vendor pursuant to this Agreement. Vendor remains liable for all damage or injury due to Vendor's negligence, or the negligence of Vendor's employees, contractors or agents.

Sponsorship Agreement

Indemnification and Insurance

Company and the Association agree to indemnify, defend and hold harmless each other, their officers, directors, employees, volunteers, subcontractors and agents, from any and all claims, losses, damages, liabilities, judgments, or settlements, including reasonable attorneys' fees, costs, and other expenses incurred on account of the indemnifying party's negligent acts or omissions in connection with the Sponsorship. In addition, Company shall maintain insurance of not less than \$1,000,000 for comprehensive general liability, with evidence of such insurance provided to the Association within 30 days of the signing of this Agreement.

Interaction of Insurance and Indemnity

- If insurance and indemnification respond to the same loss, which goes first?
 - Is indemnification net of insurance or is insurance company subrogated to indemnification rights?
- If agreements are silent, courts may apply default rules
- Specific language in agreements can avoid disputes and uncertainty
- Waiver of subrogation

Other Insurance

- **Company's own insurance policies**
 - CGL (property damage, bodily injury, advertising injury)
 - D&O (company wrongful acts)
- **Overlapping coverage leads to coverage disputes**
 - Which is primary
 - What if a conflict
 - What if limits of AI too low

Multiple Lines of Insurance

- Priority between different lines of insurance is addressed by “other insurance” clauses and state law addressing conflicts between them
- “Primary and non-contributory”

Key Takeaways: Insurance (and Indemnification) Matter!

- **What does the agreement require?**
 - Insurance, indemnity, or both?
 - How do such agreements interact?
- **Get copies of:**
 - Relevant endorsement
 - Full policy
- **Understand the scope of coverage**
- **Specific language in agreements can avoid disputes and uncertainty (otherwise default rules)**

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Notice

Key Liability Coverage Considerations: Notice

- All policies have notice provisions:
 - Condition Precedent
 - Maryland
 - DC & Virginia
- Relationship of providing notice to premium increases

Key Liability Coverage Considerations: Notice

- Notice provisions are applied more strictly for claims-made policies
 - D&O, E&O, Employment Practices are sold on a “claims made” basis
 - Most general liability coverage is sold on an “occurrence” basis

Key Liability Coverage Considerations: Notice

- **Broad coverage, but potential trap for the unwary:**
 - Increases the situations for which the policyholder must give notice or notice of circumstances
 - For example, a policyholder may not be aware that its definition of “claim” is broad enough to cover investigations. If it does not give notice of claim when it first learns of the investigation, it may lose coverage for a lawsuit brought in as later policy period arising from the investigation.
- **Even when the law is favorable, late notice is a dispute that can and should be avoided.**

Provide Prompt Notice/ Notice of Circumstances

- **Avoid the time trap**
 - All potentially relevant insurance companies should be noticed
 - Need procedures in place to ensure notice is given early
- **Notice of circumstances**
 - Differs from giving “notice” of claim
 - Provides coverage for subsequent claims after policy period ends
- **Provide notice even if you have incomplete information**

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Steps to Maximize Coverage

Step One: Assess the Claim & Determine Which Policies May Provide Coverage

- Single claims can trigger multiple policies
- First-party policies and third-party policies
- Coverage is often overlooked
- State statutes and case law
- The defense duty

Step One: Assess the Claim & Determine Which Policies May Provide Coverage (c'ntd)

- **Exclusions to Coverage**
 - Be careful to review the policy's exclusions to see if any bar coverage
- **Partial Coverage?**
 - Some claims may have multiple allegations, only some of which are covered by the policy
 - Allocation Clauses
 - 100% Defense Costs?

Step Two: Provide Prompt Notice

- Time trap
- All potentially relevant insurance companies should be noticed—don't forget excess carriers
- “As soon as practicable”
- Follow notice procedure in the policy
- Notice of circumstances
- Consequences of late notice

Step Three: Present The Claim In a Manner That Maximizes Coverage

- Pick your words carefully and do not characterize your claim in a manner that limits coverage
- Examples:
 - batch clauses
 - interrelated acts
 - investigation costs
 - proofs of loss
 - claim vs. potential claim
 - occurrence vs. occurrences

Step Four: Evaluate The Insurance Company's Response To Coverage

- **Acceptance of Coverage Letter**
 - Defense fees
- **Reservation of Rights or Denial of Coverage Letter**
 - Respond?
 - File suit?

Step Five: The Policyholder's Duty To Cooperate

- Updates to carriers
- Conflict of interest?
- Disclosure of attorney-client or work product documents
- Confidentiality agreements
- Excess insurance policies

Step Six: Selection Of Defense Counsel

- Who chooses defense counsel?
- Who controls the defense?
- What amount of defense fees are paid?
- What are insurance company billing guidelines?
- What is “reasonable and necessary?”

Step Seven: Protecting Your Insurance Assets When You Settle The Underlying Claim

- Consent to settle—check your policy language
- Allocation of underlying settlement
- Document the reasons for settlement to counter any “reasonableness” challenges

Step Eight: Protecting Your Insurance Assets When You Settle The Underlying Claim

- An insurance company that refuses a reasonable settlement demand from the underlying claimant, exposing the policyholder to excess liability, may be liable for bad faith damages in excess of its policy limits
 - Demand letter teeing up this issue puts pressure on insurance company.

Questions?

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