



Resolving Insurance Coverage Disputes – What Every Legal Department Should Know

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In 2022, the insurance industry has been emboldened to issue improper denials of insurance coverage for claims and lawsuits, threaten rescission of insurance policies and sell insurance policies with hidden trapdoors buried in endorsements. This could create a potentially devastating impact on a company's bottom line. At Barnes & Thornburg, with many decades of insurance recovery and bad faith claim prosecution for corporate insureds under our belts, we never represent insurance companies. Our loyalties are to our policyholder clients alone. Through this singular focus, we have seen a thing or two – and not always good things.

As we move headlong into Q2, legal departments, risk managers and finance executives should consider having their insurance policies reviewed and thoroughly analyzed. We have seen more policies issued in this past year with exclusions that would make coverage illusory – or not worth the paper they're written on, based on how insurance companies interpret them. Unfortunately, too many companies – having paid their premiums on time for years -- are surprised when their claims get denied simply because their insurance carriers take the position that their policies do not provide the

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Our track record reflects our success in resolving insurance coverage disputes in all areas of policy enforcement, including D&O, cyber security, long-tail, manufacturing, climate change, construction, media and more. Unfortunately, when a claim adjuster unreasonably declines coverage for a claim, it is not uncommon for the insurer's underwriters to offer the policyholder a better policy for the following year that covers the subject matter of the denied claim, for an additional premium. There are better options.

Evaluating a Denial of Coverage Through a Coverage Opinion

In a high-dollar or complicated claim, it is standard operating procedure for an insurance company to engage carrier-friendly outside counsel to write a coverage opinion as part of the claim adjustment process. That opinion evaluates the claim and provides a recommendation about whether it is covered. These insurance company lawyers know who pays the bills, and this can lead to skewed coverage assessments calculated to support the bellicose positions they know their clients want to take.

A best practice is for a policyholder to engage its own coverage attorney to provide the same kind of analysis. Having in hand an evaluation of coverage grants, endorsements, exclusions and limitations at the outset of a claim allows companies to make early cost-benefit decisions, and to be better prepared to plan a path for resolving the dispute with the insurance company.

This best practice for insurance coverage disputes is an investment to help avoid surprises down the line. A clarifying memo laying out the issues and providing the pros and cons of what the case might look like if litigated helps evaluate whether to "hold 'em, or fold 'em."