

GUIDE TO PRESERVING YOUR BUSINESS INSURANCE SAFETY NET

1. Treat your insurance policies as if they were valuable financial documents, because they are. Keep every piece of paper the insurance company sends you, in chronological order. You will likely not receive a new copy of the entire insurance policy every year, so keep all of the documents you receive the first year the policy is in place (which will be lengthy, and should include declarations pages, coverage parts - sometimes in the form of a booklet - and endorsements) and then all of the documents you receive after that. Keep them forever.
2. Read your insurance policies! Don't wait until you have a claim (or a claim has been made against you). Insurance policies are notoriously difficult to understand, particularly when it comes to figuring out how the parts of the policy (the declarations, coverage parts and endorsements) work together. Get your coverage questions answered when you first receive a policy, not when you need it to respond to a claim, because then it's too late to change your coverage if that's necessary.
3. Report claims or events which may give rise to a claim promptly. Don't do it just by calling or e-mailing your insurance broker. It's okay to do that, too (certainly you will want to keep your broker "in the loop"), but your insurance policy or policies will have a section that tells you exactly how and where you are to send notices. Do it that way, exactly the way the policy says you should. With respect to a claim against you by a third party (as opposed to a claim you may make to your insurer for damage to your own business property), provide your insurance policies to an attorney with knowledge regarding insurance coverage, and have the attorney decide which insurers to tender a claim to, and how. Don't assume which insurers should be notified (commercial general liability or professional liability insurer, current insurers or past insurers too), or whether or not the claim should also be tendered to your umbrella carrier. What is (or is not) a potentially covered third party claim is not always clear. Certainly, if you are served with a lawsuit it should be tendered to the appropriate insurer(s) immediately. But what if you receive notice of an administrative law hearing, or you receive a demand letter that threatens litigation in the future? Again, this is when you need to consult with an attorney, since failure to notify an insurer when you should could deprive you of any coverage you would otherwise have had.
4. If you ask an insurer to defend you against a third party's claim, and receive a reservation of rights letter (a letter from or on behalf of the insurer telling you that you will be provided a defense but the insurer reserves the right to contest coverage), take it very seriously. If you haven't already consulted an attorney by now, this is absolutely the time when you should. A number of issues arise from an insurer's reservation of rights letter, such as (depending upon your jurisdiction), your potential right to independent counsel (instead of, or in addition to, the insurer's choice of defense counsel) at the insurer's expense, and/or the insurer's potential right to allocate the cost of some (or, given the outcome of the litigation, potentially all) of the defense costs incurred by the insurer to you (yes, that's right, you could end up having to

reimburse your insurer). Statutory and case law applicable to these issues differ from jurisdiction to jurisdiction, so you will need the advice of an attorney who knows the law regarding insurance coverage and claims handling in your State.

5. Rather than (or in addition to) a reservation of rights letter, your insurer may ask you to sign a non-waiver agreement. This document should be taken just as seriously as a reservation of rights letter. More seriously, even. Here's why. Generally, an insurer has the burden of identifying all potential grounds for denying coverage. Failure to do so in its reservation of rights letter to the insured may be held to be a waiver of any grounds not identified. Among other things, a non-waiver agreement typically is written in such a way as to avoid such a waiver. Do not sign it until you have consulted with an attorney who is knowledgeable regarding insurance coverage.

This guide is offered for informational purposes only. It is not offered as, and does not constitute, legal advice. Laws vary widely from state to state. You should rely only on the advice given to you during a personal consultation with an attorney who is licensed in your jurisdiction. For more information regarding business risk management, visit me at <http://msquire.wordpress.com>.