

INSURING YOUR BUSINESS

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HOW LONG SHOULD I KEEP MY INSURANCE POLICIES? *By Michael R. Kelley*

Policyholders often ask, “How long should I keep my insurance policies?” Is it three years? Seven years?

The short answer is none of the above. Here are some brief recommendations regarding document retention for insurance policies:

Occurrence-based Policies

For occurrence-based policies like commercial liability, auto insurance, homeowners and excess or umbrella, you should keep them forever. That’s right. Forever. Last year, the McNees Wallace & Nurick Insurance Recovery group helped one of our clients obtain coverage for an asbestos claim that triggered a 37-year old policy. Our client did not have the actual policy, but had the foresight to keep the old declarations pages. Fortunately, retaining the declaration pages was enough to show that the client was covered, and the obligation to show an exclusion then shifted to the insurance company. The insurer could not show that an exclusion applied, and therefore had to cover the claim.

While most claims covered by occurrence policies have a two-year statute of limitations, the discovery rule and specialized rules for latent claims can effectively extend the statute of

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limitations indefinitely. Accordingly, the best practice is to keep the policies forever. If you are confident that you will not have any claims brought against you for latent matters, a good rule of thumb is to keep any occurrence-based policies for six years. Nearly all potential claims will have expired within this timeframe.

Claims-made Policies

For claims-made policies, such as professional liability, errors and omissions, and directors and officers, you may discard them after the term, any extended coverage, and any tail coverage has expired. A good rule to follow is: If you have received a replacement policy for

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your claims-made coverage, you may safely toss the old policy. If you have not received a replacement policy, you should keep the policy for the length of the extended term (usually not longer than one year), or for the length of the tail coverage. Tail coverage periods are generally not longer than six years. Therefore, if you do not want to worry about figuring out the length of the tail coverage, a good rule of thumb is to keep claims-made policies for six years. After that, they will be of no potential value.

If you do not want to take the time to distinguish between occurrence and claims made policies, a good practice to follow is to keep the policies at least six years, as explained above. If you have any questions about any of the above or about document retention policies in general, please contact a member of the McNees Insurance Recovery group. ■

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COVERAGE SPOTLIGHT: CONTRACT LITIGATION INSURANCE

By Geoffrey B. Fehling

According to the National Center for State Courts, contract disputes dominate state court caseloads: 61% of all civil lawsuits filed in state courts in the U.S. are contract disputes (for comparison's sake, only 6% are tort claims, such as medical malpractice and auto accidents). Many of those contracts in dispute contain "fee shifting" or "loser pays" provisions, which require that the losing party pay the attorney's fees and litigation expenses of the victorious party.

Insurance coverage now exists to cover the risk of these "loser pays" provisions. Contract Litigation Insurance ("CLI") covers the losing party's obligation to repay the victorious party's attorney's fees and litigation expenses.

For more information about CLI and other risk management tools, please contact a member of the McNees Wallace & Nurick Insurance Recovery group. ■



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