

Who's your Insured, Really?

For most policies you will ever write, your insured is the entity that is the Named Insured. However, there are a couple of exceptions, and the nature of the exception can affect how you interact with your insureds.

The exception that's weighing on my mind at the moment is D&O coverage. Even when you write an entity form, the main purpose of the insurance is to cover the Directors and Officers for their personal (not corporate) liabilities. However, you rarely get to speak with them en masse, explain coverages to them, and they frequently do not have a voice in the election or declination of coverage.

I have heard of occasions where brokers have insisted they meet with the board to get their collective decision, rather than taking the word of a single representative, such as the CFO, administrator, President or CEO. There's a lot to be said for that approach.

I have on my desk right now correspondence from an irate former Director of one of my former insureds who let their coverage lapse. He has just turned in a claim, only to find that the policy is no longer in force, and no extended reporting period was purchased.

I do have one carrier that would extend the equivalent of occurrence coverage to him in this type of situation (he left the company long before the policy lapsed), but his company's policy was not with that carrier.

I don't know if his claim would be covered, regardless, due to its nature (pretty pure breach of contract), but the real question is -- if you let an insured entity cancel, lapse or nonrenew a D&O policy without getting concurrence from the individual insureds, are you truly serving your client? Or are you following the path of least resistance?

This ex-insured actually asked me if there had been a board resolution to discontinue the coverage. I can only imagine the acrimonious discussions that are about to ensue -- especially if the entity had an obligation to indemnify him and has breached that obligation by terminating coverage and not having other resources with which to meet the obligation. Those issues are generally beyond the scope of what we ever know about how an insured is operating. But perhaps it would be prudent to ask your insured entities if they have contracts with their Ds or Os that commit them to indemnification. If so, that's one more brick in the wall in the argument for them buying and keeping D&O coverage in place.

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