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FINDING LOST INSURANCE POLICIES: VALUABLE TIPS FOR POLICYHOLDERS

By *Jerold Oshinsky*

This paper provides a variety of techniques that can be used to locate historical insurance coverage which could be very valuable assets to pay for attorneys' fees and possible liabilities in various kinds of lawsuits.

As a general rule, the policyholder bears the burden of proving coverage against its insurance companies. Ideally, such proof is provided by copies of the actual executed insurance policies at issue. However, where the claims involve occurrences over a long period of time, the actual policies may have been lost or destroyed, and other secondary proof may be necessary.

If a policy has been lost or destroyed, the policyholder must satisfy two requirements to prove coverage. The policyholder should prove that the policy in fact has been lost, or otherwise is unavailable. In addition, the policyholder must show that it made a diligent search for the policy in all places where the policy was likely to be found.

The policyholder, at a minimum, should provide evidence of (a) the identity of the parties to the insurance contract; (b) the policy period; and (c) the subject matter of the policy.

1. Policies dating back many years, undoubtedly, will be very valuable. The policies which may apply to the claim of damages will not only be those in the active files of your insurance department. Many older liability policies, written on an "occurrence" or "accident" basis, should provide coverage for cases that allege exposure over many years.

2. The search for coverage should include secondary evidence which as correspondence, certificates of insurance, claims files, management reports, corporate records, ledger entries and licenses. In addition, if primary policies cannot be found, and the company purchased excess insurance coverage, the schedules of the umbrella and excess policies also may disclose the underlying coverage. A thorough search for this secondary evidence, both in the United States and the United Kingdom, must be an integral part of the overall search for lost coverage.

3. The individuals who purchased the insurance should be interviewed, including retirees, and their files should be reviewed. In addition, you also should find out if the company's insurance people used an outside insurance broker to purchase their insurance and then examine each such broker's records.

4. Ask the insurance people not only for information about insurance policies they purchased for the company, but also about the policies of other companies on which you might be listed as a "named insured," "additional insured," or "other insured." In addition, you will want information about products liability coverage which might have been extended to you by vendor's endorsements.

5. Other departments or individual employees may have helpful information as well. For example, the corporate department may have corporate records or other valuable corporate documents that prove coverage, including past and present affiliations with other companies which may have provided other insurance coverage for you. The company's accounting department may have ledger entries or accounts payable records which show premium payments to insurers, or they may have actual canceled checks in their files.

6. The company's legal department may have information and documents, including claims files, contracts with other companies, and certificates of insurance required thereunder, which can help prove coverage. Claims files could be helpful, for example, if you previously have been sued. In that instance, you may have made a claim under one of your insurance policies and information relating to that policy should appear in the claims file, especially if the insurance company defended the claim. You can also do a search for your name, as a defendant in litigation through LexisNexis and/or Westlaw. If you find a liability case involving your company, there may be information on insurance in the reported decision. The name of your attorney in the case also may appear in the decision and you may be able to contact the attorney for any relevant files or information.

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7. Once you have exhausted your resources in the home office, you should check into your branch or divisional offices that may have had some relation to the underlying actions for which you now seek coverage. These offices and contacts may have non-duplicative files that will aid you, as well. They also may have retained documents that might otherwise have been routinely discarded at the home office.

8. Once you have exhausted all in-house resources, there are several additional outside searches you should consider undertaking. Indeed, there are many outside sources of information on insurance coverage which are available to the diligent searcher.

9. One potential outside source is workers compensation files located in every State of the United States. While you may have limited success with this method, you may discover that an industrial commission may have a file showing that an insurance company defended a workers compensation case on your behalf. The same insurance company also may have provided you with liability insurance.

10. Railroads also are a potential source of coverage if you ever operated a factory under a sidetrack agreement with a railroad. Under such an agreement, the railroad normally would have required evidence of insurance (e.g., a certificate of insurance) from you. The railroad may have kept records containing these certificates and should be checked.

11. The federal government also may prove a helpful resource. For example, if you did government contracts work during World War II with the Department of Navy on a cost-plus contract, the copies of your actual insurance policies may be in the Navy Department's insurance files in Washington, D.C. The U.S. Maritime Administration also may have secondary evidence of coverage in its circa-World War II shipbuilding files. These files were inadvertently overlooked when they should have been routinely destroyed, and they have been retained. Any of this documentation should be readily available through request under the Freedom of Information Act.

12. You also should consider seeking access to documents produced in other large insurance coverage cases. For example, in the mammoth California asbestos litigation, *In re Asbestos Insurance Coverage Cases*, the trial judge ordered insurance companies to produce every piece of paper they had about every one of their policyholders with delayed-manifestation cases, whether a part to

the California litigation or not. Some of the documents produced as a result of this order included were copies of insurance policies that were sold to various policyholders.

13. One additional effort involves a search of the London insurance market. When you purchased excess coverage from London, a paper trail was set up which easily can be followed with the assistance of knowledgeable practitioners. In the past, your U.S. broker might have gone to a broker in Canada or directly to a London broker authorized to deal in London's insurance market to acquire the necessary coverage. In either event, the London brokers would then have used copies of your primary policies, or related documentation, to supply information regarding the terms of your underlying coverage to the excess underwriters. Remarkably, because of their comprehensive recordkeeping systems, many of the London brokers have retained copies of these primary policies, or records relating to those policies, in their files. Even if they do not have the actual policies, London brokers should still have the "broker records" (which detail your coverage) that were used on the market floor to write a broker's slip and purchase your excess insurance. We have found coverage dating back to the 1940s and 1950s – worth hundreds of millions of dollars to our clients – by investigating the London insurance market.

If you utilize some or all of the above measures, you may be able to find valuable insurance assets believed to be lost.

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Gilbert Oshinsky LLP is a Washington, DC-based law firm that focuses its practice on policyholder insurance recovery work. The firm's clients include Fortune 500 corporations, smaller companies, creditor committees, trusts, non-profit organizations and individuals.

The content of this article is intended to provide a general guide to the subject matter and is not intended to constitute legal advice. Personalized advice should be sought regarding any questions you may have as to specific circumstances.

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