

Insurance Archaeology: A Strategic Approach to Maximize Recoveries for Sexual Abuse Claims

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Insurance archaeology is a colorful term of art that describes the specialized research techniques to reconstruct missing insurance policies. A search for missing policies is not a pro forma exercise. A wide range of organizations face claims and litigation for sexual abuse that occurred over decades and each presents unique challenges and opportunities for locating lost policies.

Non-profit organizations, churches, schools, clubs, camps and other youth serving associations face a growing number of claims alleging sexual abuse and misconduct. The insurance programs vary accordingly. In some instances, organizations are covered under the program of a parent or affiliated organization while others formed risk pools to purchase insurance.

Typically, the first step to locate missing policies is to research the history of the organization starting from the time of the alleged abuse. Locations of churches, schools and camps may have changed over the years and former ties to a religious parent organization may no longer exist. Schools that now operate with layers of professional staff may have formerly been run by a longtime headmaster or an active Board of Trustees. Each of these details can reveal key sources of information on historic coverage.

Conducting a Search - Internal Records

An important source of information is the organization's historic records. Insurance information can be found in a wide range of records including accounting files, correspondence, contracts, leases, claims and litigation. A variety of business records from the pertinent period can include insurance information or leads to outside sources such as brokers, counsel, litigation and contracts that required certificates of insurance.

The minutes of the Board of Directors or Trustees can be an important source of information for non-profit organizations. Unlike corporations, non-profits can keep detailed minutes which often reference insurance issues, e.g. premiums, annual renewals as well as leads, such as brokers and outside counsel. Minutes are also a critical source of information regarding claims and litigation which can then be further researched through court records and the records of defense counsel.

Some organizations have formal archives maintained by professional archivists who may be helpful in locating likely record groups such as those from the business office and legal files. For other policyholders, there may be little to no systematic procedures for records retention. In these cases, the search for missing policies may lead to files buried under hymnals in a closet or in the back corner of the stairs by the school gym. In conducting a search, it is important to keep in mind that even a single document can identify a key policy or a lead to an outside source.

Once record groups are identified or locations of historic files have been determined, the following steps can facilitate the search:

- Include any departments where records might document missing or incomplete policies or provide leads to possible outside sources of information.
- A physical inspection of any records that still exist in basements and attics may be unpleasant but very fruitful since references to insurance and leads to outside sources can be found in a variety of records.
- When reviewing the historic records, keep an accurate log of where and by whom documents were found.
- In the course of reviewing the corporate records, note any possible external sources of records, such as brokers, additional insureds or outside counsel.
- Once the highest priority records have been reviewed, it is important to assess the remaining gaps in information to determine if there are additional records that should now be pursued to fill-in the remaining gaps

Tapping Institutional Memory

Much of the detective work in insurance archaeology research involves tapping into human intelligence, what the spy flicks call ‘HUMINT,’ the recollections of former employees, board members, brokers and outside counsel. For non-profits this research can be particularly fruitful since there is often a personal connection to the organization and even decades later, people are eager to help. Interviews often identify carriers, brokers, third parties that received certificates of insurance and information on past claims and litigation.

Locating firms and individuals can be a challenge; however, technology can greatly enhance the search. Given numerous moves and name changes over several decades, online research is essential to understand the history of the organization and to locate key former personnel. Social media, including Facebook and LinkedIn profiles, can help to locate these people.

Conducting a Search - External Sources

Insurance Carriers

Requests to carriers can be submitted to any primary, excess or workers compensation carriers identified in years where policies are missing. It is helpful to ask carriers to search all of their records including applications and underwriting files that could identify prior or subsequent coverage. These requests can also include the records of all affiliated and legacy companies as other relevant liability policies could have been issued by these carriers.

Even the records of insolvent carriers may contain secondary evidence of missing policies. For example, schedules of underlying coverage in excess policies issued by carriers that are now insolvent may contain details of missing primary policies. In addition, reviewing these policies can also identify leads to potential outside sources such as brokers or additional insureds.

Former Brokers

Consolidation among insurance brokers has been so extensive that identifying the successors often requires painstaking research. State insurance regulators, historic phone books, Secretary of State filings and even obituaries can provide details to help unravel these complex corporate histories. Records requests can be sent to the successors of each broker. Submitting the names of the legacy firms and corresponding time periods to the current successors can facilitate the search of legacy records. In addition, interviews of the individual brokers that handled the account can also be critical to identifying carriers, contracts that required evidence of insurance, past claims and litigation.

Additional Insureds and Certificate Holders

Since many contracts contain hold harmless and indemnification provisions, it has been a common practice to provide certificates of insurance to meet these contractual requirements. Records related to the contract that are maintained by the insured itself or the third party could include copies of the certificates of insurance and in some instances copies of policies.

Government Entities

Government contracts have historically been the most onerous in terms of insurance requirements and documentation. State regulatory agencies also require evidence of insurance and FOIL requests can be submitted to request these filings.

Court Research

Policies and secondary evidence of liability insurance may be found in court records in civil cases ranging from trip and falls to auto accidents. Pertinent cases in both state and Federal courts can be identified in Westlaw and LEXIS searches. Since many courts maintain indices that can be searched by the name of the defendant, requests can be made directly to the courts to identify cases where the organization was a defendant in the years where policies are missing. Court records will identify defense counsel which can be another outside source of information.

Law Firms

Law firms often retain records for decades or more and are a key source of information on past insurance. Outside counsel may have retained records that contain information on insurance coverage including correspondence, litigation, and contracts. The records of defense counsel are particularly important as they often contain pertinent information from prior searches for insurance, correspondence with carriers and even copies of policies.

Preserve the Evidence

The process of notifying insurers of claims that occurred over decades, and then dealing with the inevitable requests for documentation that follow, can severely tax any organization's ability to pursue coverage. Unless a company is prepared with full details of all possible coverage, it will be at a disadvantage in negotiating settlements. Having quick access to the details of the policies and scanned images of the records in a consistent format saves critical time when notifying insurers and coordinating information between outside counsel, brokers and consultants.

Map the Results

The return on investment of time and resources to locate and organize the records will be greatly enhanced if the complex and detailed coverage information is illustrated in a coverage chart. The charts can be used to illustrate several complex issues at a glance:

- Key coverage terms and exclusions
- Application of policy limits
- Exhaustion of aggregate limits
- Insolvent carriers
- Remaining gaps in the records
- Types of documentation available

The advantage of a visual presentation lies chiefly in the immediacy with which priorities can be identified and the monetary issues can be quantified. Understanding the complexities of an historic insurance program at a glance is instrumental in formulating effective strategies for negotiations with insurers.

Maximize Insurance Recoveries

Given the enormous costs of defending and settling sexual abuse claims and litigation, time is of the essence in documenting lost policies. The results of a search can make the difference between bankruptcy and survival in these litigious times. The erosion of insurance assets via insolvencies and run-offs, combined with the potential for exhausting aggregate limits, has heightened the urgency of locating and pursuing solvent coverage while it is still available.