Insurance Archaeology: Protecting the Future Against the Past

AAPA Finance Seminar
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Why Insurance Archaeology?

“The past is never dead.
It’s not even past.”

William Faulkner
Insurance Portfolios Under Siege

- Exhaustion of aggregate limits
- Insolvencies and solvent schemes
- Emerging torts
- Renewed environmental enforcement
Map the Portfolio

Historic Insurance Portfolio
1972 - 2006

LEGEND
- Insolvent Carrier
- Solvent Schemes
- Limits Exhausted
- Quota Share
- Gap in Information
- Change in Scale

LIMITS OF LIABILITY $
The Historic Insurance Audit

- Organize existing insurance records
  - Identify actual gaps
  - Insolvent insurers
  - Exhausted and distressed limits
  - Restrictive coverage
Current Challenges

- Institutional histories can be complex
- Records disappear as operations merge and downsize
- Institutional memory is lost as key employees relocate and retire
Current Challenges

Decades of consolidation

- Carriers
- Brokers
- Law firms
- Records storage companies
The Search – Human Intelligence

Interview former employees

- Insurance
- Legal
- Finance
- Records
The Search - Internal Sources

Use *data mining* techniques

- Download electronic indices from off-site storage vendors
- Run keyword searches to identify pertinent records
- Physically inspect records
The Search - Internal Sources

Target key departments

- Insurance
- Legal
- Accounting
- Secretary
- Engineering
The Search - What to Look For

Insurance records

- Policies
- Binders
- References in other policies
- Certificates of Insurance
The Search - What to Look For

Secondary Evidence

- Accounting records
- Billing and premium allocations
- Safety inspections by carriers
- Legal files/claims
- Board Minutes
The Search - Outside Sources

Much detective work can now be done online

- Identify successors to carriers, brokers, and additional insureds
- Locate key players through web searches and national directories
- Research past litigation using Lexis, Westlaw and federal and state court websites
Outside Sources - Carriers

Identify current successors and request records:

- All carriers that issued missing policies
- Excess carriers
- Workers’ compensation carriers
Outside Sources - Brokers

Identify current successors and contact:

- Retail brokers
- Excess and surplus lines brokers
- London Market brokers
Outside Sources – Broker’s Placing Slip

Broker’s Code 552

Excess Comprehensive Re-Insurance

Limits

Form T.P.4

Excess Comprehensive Liability Reinsurance

CORPORATION AND SUBSIDIARY COMPANIES AS NOW OR HEREAFTER MAY BE CONSTITUTED – as original.

36 months at August 10th, 1964.

In respect of all the Assured's eggs - as original.

LIMITS:

P.L. $ 35,000 a.o.o. and annual aggregate for Products.
P.D. (Gen.) $ 35,000 a.o.o. an annual aggregate each Section.
(Auto) $ 35,000 a.o.o.

EXCESS OF:

P.L. $ 15,000 a.o.o. and annual aggregate for Products.
P.D. (Gen.) $ 15,000 a.o.o. an annual aggregate each Section.
(Auto) $ 15,000 a.o.o.

Form T.P.4

Tax and Tax Paid Clauses.

Service of Suit Clause (USA) as Endorsements & Substitution.

It is understood and agreed that the policy is subject to an overall limit of $35,000 ultimate net in any one occurrence or accident or aggregate where applicable involving Personal Injury and Property Damage.

It is also understood and agreed that notwithstanding any exclusion or limitation herein contained, in the event of (Insured's / Assured's) replacement cost or containers thereof manufactured by Assured, and also the cost of products or containers - as in Section of original.
Outside Sources – Government Agencies
Outside Sources – Courts

- Westlaw and Lexis searches
- State courts
- Federal courts
Outside Sources – Additional Programs

Identify additional programs

- Tenants
- Contractors

Conduct research

- Port records
- Public records
Reconstructing Terms and Conditions

- Standard insurance industry forms
- Specimen policies
- Policies from prior or subsequent years
- Policies issued to other insureds
Sample Policy Forms

T.P.4 Policy Form

INSURANCE ARCHAEOLOGY GROUP
Sources of Policy Forms

- Insurance Libraries
- Consultants
- Other Insureds
- State Insurance Departments
Lost Policy Issues

- Evidentiary issues have been raised for all types of documentation including copies of signed policies
- Courts have upheld the validity of secondary evidence in proving missing policies
- Insurance companies often bear the burden of proving exclusions or exemptions to coverage
Prepare and Preserve

- Document as much coverage as possible to pursue solvent coverage while it is still available
- Document research to prepare for challenges by insurers
- Create an electronic system to quickly access data and preserve records
The Return on Investment

Access the broadest coverage
The Return on Investment

Access the broadest coverage
The Return on Investment

Historic Insurance Portfolio
1947 - 1987

LEGEND
- Policy
- Placing Slip
- Secondary Evidence
- Insolvent Carrier
- SIR
- Quota Share

Change in Scale

LIMITS OF LIABILITY

LIMITS OF LIABILITY

$100M

$90M

$80M

$70M

$60M

$50M

$40M

$30M

$20M

$10M

$5M

$1M

$500K

$100K

0

$10M

$20M

$30M

$40M

$50M

$60M

$70M

$80M

$90M

$100M
The Return on Investment

- Quick access to the entire portfolio of assets
- Millions of dollars of coverage preserved and at the ready
- Maximize recoveries
Insurance Archaeology:
Protecting the Future Against the Past

Presentation

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