



## Spring Cleaning Tip For Risk Departments: Dust Off Those Old Insurance Policies

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During this time of year, spring cleaning fever sets in and even corporate risk departments can benefit from the exercise. If your company has historic predecessors there may be legacy insurance policies that can provide coverage for long-tail claims, especially in the environmental and asbestos context. Therefore, taking the time to do an annual review of what records exist can save your company time and money in the future when it is faced with potential claims.

It is prudent for your risk department to review its files (both hard copy and electronic) for evidence of such historical coverage, including the policies themselves. Doing so will not only capture policy records for future claims when the information is still easily obtainable, but it can also prevent key records and policies from being destroyed in accordance with standard record retention policies. However, if you find yourself in a situation where you are faced with a claim but cannot find the historical policy, or you think that it has been destroyed – there is still hope.

An insured can offer secondary evidence to prove the existence and coverage terms of a missing policy. Generally, the insured must show that it made a reasonable and diligent effort to locate the missing policy and that there has been no bad faith conduct by the insured. Then, the burden shifts to the insurer to show evidence of any applicable policy exclusions. These burdens are dependent on the applicable choice-of-law.

The majority of states apply a “preponderance of the evidence” standard. Coverage counsel can help guide a company through this analysis. Additionally, closing binders, brokers and insurance archaeologists can be great sources for policy information and evidence. But, these alternatives can be costly and time consuming, especially when faced with an active claim. It

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- First-Party Property
- Insurance Recovery and Counseling
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- Professional Liability
- Representations and Warranties
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- Risk Management
- Insurance Policy

is much easier and cost-effective to have a system in place to ensure that your insurance documents are being properly collected and maintained.

