

## Don't Miss This Critical Step When Considering Insurance

By Tony Marcon and Jay Spievack

We have all purchased products or services based on claims made in marketing and advertising about what we are buying. But buying insurance for a company is very different from buying something that promises to make you look younger. In fact, the marketing materials used by your insurer may be a key element of a claim to collect the money you or your portfolio company deserve from your insurance coverage.

**Materials tout broad coverage.** Insurers compete to get your broker to sell your company its policies, and they do this by describing expansive coverage and narrow exclusions in their marketing brochures. Brokers regularly use the insurers' marketing materials to describe your insurer's coverage and to negotiate even greater coverage expansions. Like most marketing and advertising materials, these are written to be enticing, so that you will choose the insurance coverage described over one of its competitors.

**Get your marketing materials early.** Do not wait until you are in the middle of a claims dispute. As soon as you are in the process of purchasing or renewing your insurance, you should request that your broker obtain marketing materials for any insurers you are considering. If you do not have them for your current policies, ask your broker if they have them or can obtain them. If you wait until you are in the middle of a claim dispute, you can be sure that your insurer will make it more difficult and costly for you to obtain these materials.

Insurers' marketing materials may be the key to a future dispute.

**Inconsistencies are important.** Everyone knows that claims made in advertising can stretch the truth, but in insurance, inconsistencies can have significant legal implications worth millions of dollars. Marketing material often refers to coverage expansions or exclusions narrowed in prior policy years. Courts regularly decide against an insurer and in favor of a policyholder, such as you or your portfolio company, when an insurer's position in response to your major claim is at odds with its own marketing material.

**Legal approaches to recovery.** Inconsistent positions can also give rise to various legal claims offering policyholders different ways to secure coverage. In many states, these may include bad faith, false advertising, and other state statutory consumer protection or insurance statute claims. And, as we have said before, over-cooperating is always valuable. Your cooperation can only make clearer the inconsistency of your insurer's positions and help your cause.

Obtain insurers' marketing materials when you are first considering buying coverage for your company or your portfolio company. It may be a critical element in recovering what you deserve, and can only be beneficial in the long run.

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