

INSURANCE RECOVERY FOR SEXUAL MISCONDUCT CLAIMS



Within the past 20 years, numerous organizations have faced claims by individuals alleging that they were sexually abused by staff. With growing public pressure on various state legislatures around the country to lift or suspend the statute of limitations restrictions on filing sexual misconduct claims, it is likely that the number of these claims will only increase. These claims can have a significant negative impact on an organization's financial outlook, and the ability to mitigate these costs may ultimately determine whether or not an organization survives. Fortunately, historic insurance assets may provide the critical funding for defense and indemnity costs incurred while dealing with these claims.

Coverage for misconduct claims is more likely to exist under the policies issued at the time of the occurrence of the alleged misconduct (e.g., the 1960s through 1980s), rather than under the policies in effect when the claims are made. While earlier policies do not contain the sexual misconduct exclusions typically found in contemporary liability policies, the process of locating and analyzing decades of historic insurance coverage presents its own challenges. In addition to the mechanics of locating and organizing coverage placed 30 to 40 years ago, organizations are faced with the complications of allocating claims to appropriate policy years and negotiating coverage agreements with numerous insurance companies.

The Complex Liability Consulting Practice of Marsh Risk Consulting (MRC) specializes in assisting affected organizations overcome these challenges. Our staff includes insurance archaeologists, attorneys, claim analysts, and statistical and financial experts who can assist affected organizations in navigating these types of claims. We work with clients to quantify potential liability exposures, analyze assets available to respond to losses, and ensure that strategies are developed to optimize insurance recoveries. MRC also can assist in locating historical insurance policies and assessing the financial condition of insurers that issued applicable coverage.

MARSH RISK CONSULTING

Our services focus on:

ARCHAEOLOGY AND SOLVENCY ANALYSIS

Generally, the burden of proving the existence, terms, and conditions of the policies is on the policyholder. Accordingly, the first step in pursuing insurance recovery is to locate any records relating to historic insurance coverage. MRC's insurance archaeology specialists have extensive experience in locating evidence of coverage for "long-tail" claims. With our wide range of insurance contacts and access to broker archives both domestically and in the United Kingdom, we can provide affected organizations with a variety of services designed to research missing coverage.

POLICY ANALYSIS, COVERAGE GRAPHS, ELECTRONIC ARCHIVING, AND ALLOCATION MODELING

Our experienced attorneys and insurance professionals provide comprehensive analysis of historical insurance information along with policy charting and electronic policy archiving using our proprietary, Web-accessible application Insurance Coverage Explorer (ICE). Once we have analyzed the available insurance assets, we can use this information to develop complex allocation models to assist in allocating the costs associated with sexual misconduct claims to the potentially triggered policies.

FORMULATION AND IMPLEMENTATION OF AN INSURANCE RECOVERY STRATEGY

Our consultants work with clients to identify legal precedents that could impact recovery, anticipate insurers' responses, and develop appropriate allocation and recovery strategies. MRC's access to and reputation with insurance company management facilitates meaningful settlement negotiation and helps secure maximum recovery. Our experience in negotiations with insurers can help you achieve favorable results without the need for costly and time-consuming litigation. If litigation becomes necessary, we can assist legal counsel in its analysis and preparation of litigation strategies, aggregate erosion, and data collection and maintenance.

To learn more about how MRC's Complex Liability Consulting Practice can help you meet your insurance recovery objectives, please contact:

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