AI Exclusions in Insurance Policies: A Growing Threat and What To Do

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The Problem

The use of artificial intelligence, and thus the exposure associated with artificial intelligence, is exploding.

At the same time, insurance companies have begun to roll out artificial intelligence exclusions, and the terms of some of those exclusions are exceedingly broad.

For example, some insurers have introduced exclusions that provide:

> This Policy does not apply to any claim, wrongful act, damages or defense costs based upon, arising out of, or in any way involving any actual or alleged use of generative artificial intelligence by the insured. (emphasis added).

That language is very broad, particularly given the "in any way involving" language. And given the widespread (and increasing) use of generative artificial intelligence, it is easy to imagine claim scenarios where — somewhere in the chain of events — generative artificial intelligence was "involved."

The bottom line is that insurance companies are rolling out artificial intelligence exclusions at the same time that policyholder clients have developed a pressing need for artificial intelligence coverage. So, what can we do?

The (Potential) Solution

It is important that corporate policyholders do not overlook that insurance policies are often negotiable, just like any other commercial contract. The negotiation process often occurs during renewal or policy placement, and during that process, policyholders can request that unfavorable terms are removed or revised. Every year, Haynes Boone insurance recovery lawyers assist dozens of clients with that process.

The ability of policyholders to achieve meaningful change can be influenced by the strength of their relationships and their brokers' relationship with their underwriters. It can also be influenced by other considerations, such as the importance of the policyholder to the insurer's book of business and the aggressiveness of the proposed change. But the bottom line is that it often does not hurt to ask.

Beyond seeking to revise policy terms pre-placement, corporate policyholders should always scrutinize denials of coverage, including those based on exclusionary provisions. The importance of doing so is heightened with new and untested exclusions, like artificial intelligence exclusions.

Conclusion

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Corporate policyholders must be aware of the emergence of artificial intelligence exclusions and their potential application, particularly as those same corporate entities are leveraging artificial intelligence with increased frequency. Beyond mere awareness, corporate policyholders should also consider negotiating the scope of those exclusions — and any other unfavorable insurance policy terms — with their underwriters. Haynes Boone's insurance recovery group can assist with that workflow and with the evaluation of any claim denials predicated on artificial intelligence exclusions or any other policy terms.

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