

# Beginning Again: 6 Tips for Insurance Policy Renewals

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PRACTICES Insurance Recovery

Each year—potentially at different times throughout the calendar—corporate policyholders and their insurers engage in the ritual of policy renewal. Sometimes the renewal process actually involves a continuation of the insured’s existing coverage, albeit potentially under different terms and conditions. At other times and increasingly, the end of one policy period may bring a non-renewal and the necessity to place coverage with a different insurer. Whether the replacement of a corporate insurance program involves a renewal or non-renewal, the process inevitably involves complex considerations and issues, including statutory and contractual rights and regulations, strategic options and best practices. To help navigate this annual event, here are six tips that every corporate policyholder should know before going through a policy renewal.

**1. Notice of Material Changes in Renewed Policies.** Most states regulate the non-renewal of commercial property and liability insurance. But even when an insurance policy is nominally “renewed,” there may be changes that substantively limit or narrow coverage relative to the policy that is being replaced. State insurance laws may regulate this conduct as well. Specifically, an insurer may be required to give notice of material changes in policy terms introduced at renewal. If notice of such changes is not provided, the insurer may be bound by the original policy terms and precluded from relying on new limitations or exclusions on coverage for which the requisite notice was not provided.<sup>1</sup> The extent to which an insurer or insured may be bound to policy changes made at renewal may also depend on whether the changes were requested or otherwise agreed to by the insured.<sup>2</sup> As a result, corporate policyholders should be aware not only of material changes made during the “renewal” process, but also whether the underwriters have provided appropriate notice of novel reductions in coverage.

**2. Notice of Non-Renewal.** As some point, the number and quality of changes made from one policy year to the next may cross the line from a “renewal” to a “non-renewal.”<sup>3</sup> But setting aside the introduction of exclusions or other limitations on coverage, when an insurer elects not to renew a property or liability policy, state insurance laws may require express notice to the insured within a specified number of days before the existing policy expires.<sup>4</sup> The notice requirements in some states are more onerous than others.<sup>5</sup> Such requirements may not apply in all circumstances, including to certain types of insurers<sup>6</sup> or when the insured has failed to pay the necessary premium.<sup>7</sup> Depending on specific policy terms, some policies may also restrict an insurer’s ability to refuse renewals or impose certain contractual obligations, including notice, upon non-renewal.<sup>8</sup> Moreover, when an insurer opts to non-renew existing coverage, the insurer may be required—with or without a request from the insured—to disclose the reasons for the decision to non-renew (or decline or cancel coverage).<sup>9</sup>

**3. Claims Arising From Renewals and Non-Renewals.** The various state statutes governing the renewal and non-renewal of insurance policies beg the question: If an insurer

fails to provide the appropriate notice or otherwise comply with other related obligations, including a necessary explanation of the basis for the nonrenewal, does the insured have claims against the transgressing insurer? As always, individual state laws may vary regarding the existence of a private right of action and the elements attaching to such claims. Depending on facts and circumstances, violations of state renewal requirements may implicate any number of potential claims and causes of action.<sup>10</sup> But as a general proposition, an insurer's obligations to act in good faith certainly exist in the context of a policy renewal, as well as in responding to claims.<sup>11</sup> Corporate policyholders should, therefore, not only be vigilant in enforcing compliance with state renewal and non-renewal laws. Such insureds should also be familiar with the statutory and common-law causes of action that are available to remedy misrepresentations, a breach of the insurer's duty of good faith and fair dealing, or other misconduct, even in the context of a policy renewal.

**4. Notice of Circumstances.** When the insurance policy that is non-renewed is a claims-made policy, there are a variety of issues for policyholders to consider. If the policy is discontinued without replacement, a tail may be contractually required or otherwise appropriate. If the policy is non-renewed, but replaced, the policyholder will inevitably have to consider whether and to what extent prior-acts coverage should be obtained under the replacement policy. When circumstances limit the policyholder's ability to obtain either a tail or full prior-acts coverage, insureds should also consider submitting a notice of circumstances. Most claims-made forms not only require claims to be made and timely noticed within the policy period or extended reporting period, they also typically allow insureds to provide notice of "circumstances" likely to give rise to a claim. When such a notice is given, future claims arising out of the described facts and circumstances in the notice will be deemed to have been made during the period in which notice was given, even if the future claim is made years after the fact. As a result, when future claims are anticipated, providing a compliant notice of circumstances may have the effect of granting the insureds a *de facto* "tail" or extended reporting period for claims arising out of the situation or conditions for which notice has been provided. Individual policy terms and the specific factual contexts may vary significantly from one policyholder to another. But corporate insureds should carefully consider the merits of providing a notice of circumstances, particularly when an existing claims-made policy is not renewed.

**5. Representations in Policy Applications.** The underwriting process, including the disclosures and subjectivities involved in placing coverage at renewal, will inevitably vary significantly based on the market, the insured and the risk. Whatever that specific process may look like, sophisticated insureds understand the implications of making disclosures and representations that an insurer may rely upon to underwrite a given risk. Risk managers and counsel should obviously act reasonably to verify the accuracy of the information provided and be mindful of policy terms memorializing the scope of the information relied upon for underwriting purposes, including publicly available information that may not actually change hands during a renewal. Depending on the policy, other relevant terms may dictate the potential consequences of inaccuracies in representations made in policy applications, including which individual insureds may or may not be affected. At the same time, state laws may also limit or otherwise govern the impact of alleged misrepresentations in a policy application.<sup>12</sup> In any event, along with efforts made to reasonably respond to underwriters' requests for information, corporate insureds should understand the contractual and statutory protections afforded to insureds with respect to disclosures and representations made during the renewal process.

**6. Existing Claims.** For some corporate insureds, the annual policy renewal may be complicated by the existence of lingering first-party or third-party claims, whether disputed or otherwise. At best, a pending claim may have impacts on premiums, exclusions or other limiting terms at renewal. At worst, a pending claim can prompt a non-renewal. Disputed claims, in particular, can also burden commercial relationships with significant value to corporate insureds. At the same time, with the right rapport and under ideal circumstances, a policy renewal can offer a unique opportunity to make progress in resolving outstanding disputed claims between corporate policyholders and their underwriting partners. While communication between claims and underwriting personnel is often lacking, the renewal process may open a dialogue that allows all stakeholders to consider the value of an existing claim against the value of a larger business relationship. In that context, there may be room to compromise claim value in exchange for premium (or other terms) or to potentially agree to changes in a renewal policy in exchange for resolution of a contested claim. Whatever the particular circumstances may be, corporate insureds should consider opportunities to use the renewal process to advance and resolve disputed claims.

Between insuring agreements, declarations, exclusions, definitions, conditions, endorsements, premiums, retentions, subjectivities and applications, insurance policy renewals can be fraught with complexity and pitfalls. No single list can condense all relevant considerations, which may include commercial and even (corporate) cultural factors, influencing decisions made during the renewal process. But with awareness of the legal frameworks outlined above, commercial insureds will be better positioned to protect their rights and achieve the best possible outcomes during a corporate policy renewal.

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<sup>1</sup> See, e.g., 1 ALLAN D. WINDT, INSURANCE CLAIMS AND DISPUTES § 6.9, at 6-139 n. 3 (5th ed. 2007) (collecting cases in support of the “renewal rule”); *Zenith Ins. Co. v. Commercial Forming Corp.*, 850 So.2d 568, 570 (Fla. Ct. App. 2003) (“[U]nless notice is given to the contrary, upon renewal of coverage by the payment of the new premium, the parties are entitled to assume that the terms of the renewed policy are the same as those in the original contract.”); *Reliance Ins. Co. v. VE Corp.*, 2000 U.S. Dist. LEXIS 1819, at \*35 n.10 (E.D. Pa. Feb. 10, 2000) (“[I]t appears that even under Texas law, the TPE could not have been inserted in the Renewal Policy without notice and the insured’s consent. At the time the Renewal Policy was issued, Texas regulatory law required consent of the insured before a substantive change could be inserted into the policy. Specifically, the Texas Administrative Code provides that ‘any company that declines to recognize or put into effect additional coverage to which an insured is entitled under the provisions of an existing policy, or that attempts to reduce or restrict coverage under the provisions of an existing policy by endorsements or by any other means, is in violation of these sections if such acts are performed without the consent of the insured, and shall be subject to the same penalties as a policy that is canceled in violation of these sections.’” (citations omitted)); *Gen. Agents Ins. Co. v. St. Paul Ins. Co.*, 732 S.W.2d 868, 871 (Ark. App. 1987) (“Appellant had a duty to notify the insured that the coverage was changed on the renewal policy. It has been established by the facts of the record that no notice of change was given. Therefore, appellant is estopped from asserting the absence of liability coverage in the renewal policy.”); *Woodlawn Fraternal Lodge No. 525 v. Commercial Union Ins. Co.*, 510 So.2d 162, 164 (Ala. 1987) (“[T]he burden is on the insurer to notify the insured if the renewal policy differs from the original policy. Failure to notify the insured will result in the insured’s being entitled to coverage under the policy as originally issued.”) (citations omitted); *Canadian Univ. Ins. Co., Ltd. v. Fire Watch, Inc.*, 258 N.W.2d 570, 575 (Minn. 1977) (“[W]hen an insurer by renewal of a policy or by an endorsement to an existing policy substantially reduces the prior insurance

coverage provided the insured, the insurer has an affirmative duty to notify the insured in writing of the change in coverage. Failure to do so shall render the purported reduction in coverage void.”)

<sup>2</sup> See, e.g., Tex. Ins. Code § 551.056(e).

<sup>3</sup> *Indian Harbor Ins. Co. v. F&M Equip., Ltd.*, 804 F.3d 310 (3d Cir. 2015) (“[F]or a contract to be considered a renewal, it must contain the same, or nearly the same, terms as the original contract.”); compare *LIR Investments, LLC v. Stokelbusch*, 902 N.W.2d 801 (Wis. Ct. App. 2017) (“The sole issue on appeal is whether a policy issued by Wisconsin Mutual to LIR on October 23, 2013, and cancelled by Wisconsin Mutual on December 30, 2013, constituted a new policy or a renewed policy, thereby affecting the date at which Wisconsin Mutual could terminate coverage under Wis. Stat. § 631.36 (2015-16).”)

<sup>4</sup> See, e.g., Tex. Ins. Code § 551.054 (“An insurer may refuse to renew a liability insurance or commercial property insurance policy if the insurer delivers or mails written notice of the nonrenewal to the first-named insured under the policy at the address shown on the policy. The notice must be delivered or mailed not later than the 60th day before the date on which the policy expires. If the notice is delivered or mailed later than the 60th day before the date on which the policy expires, the coverage remains in effect until the 61st day after the date on which the notice is delivered or mailed.”)

<sup>5</sup> See, e.g., *Massey v. Allstate Ins. Co.*, 800 S.E.2d 629, 633 (Ga. Ct. App. 2017) (“For written notice of nonrenewal to be effective under OCGA § 33-24-45, the insurer must either (a) deliver the notice in person to the insured or (b) deliver the notice via first-class mail and receive ‘the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service.’ The terms of this statute ‘must be exactly followed.’” (Citations omitted.)

<sup>6</sup> See, e.g., *Whitecap Mountain Recreation, Inc. v. Axis Surplus Ins. Co.*, 2021 U.S. Dist. LEXIS 147023, \*7, 2021 WL 3403802 (W.D. Wis. Aug. 4, 2021) (“The nonrenewal provisions of § 631.36 do not apply to AXIS, which, as a surplus lines carrier, is not comprehensively regulated under Wisconsin’s insurance code.”)

<sup>7</sup> See, e.g., *Tex. Farm Bureau Underwriters v. Rasmussen*, 410 S.W.3d 335, 339 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (holding that Section 551.105 of the Texas Insurance Code, requiring 30 days’ notice for a refusal to renew, does not apply when the insured fails to pay the premium).

<sup>8</sup> See, e.g., *Farmers Group, Inc. v. Geter*, 620 S.W.3d 702, 707 (Tex. 2021) (addressing language from a homeowner’s policy stating that “[w]e may not refuse to renew this policy because of claims for losses resulting from natural causes.”)

<sup>9</sup> Tex. Ins. Code § 551.002 (“The commissioner shall require an insurer, on request by an applicant for insurance or a policyholder, to provide to the applicant or policyholder a written statement of the reasons for the declination, cancellation, or nonrenewal of an insurance policy to which Section 551.001 applies.”)

<sup>10</sup> See, e.g., *Gotkin v. Allstate Ins. Co.*, 142 A.D.3d 17 (N.Y. Sup. Ct. 2016) (finding that an insurer’s failure to comply with Insurance Law § 3425(d)(1), governing a liability insurer’s right to cancel,

condition or non-renew coverage, provides a basis for reformation of the subject policy); see also *Badin v. Liberty Mut. Ins. Co.*, 2025 U.S. Dist. LEXIS 157002, at \*9 (S.D. Cal. Aug. 13, 2025) (denying a motion to dismiss a breach-of-contract claim based on allegations that Liberty Mutual breached a statutorily implied term in a policy requiring a non-renewing insurer to provide the specific reasons for the non-renewal “by failing to provide the specific reason or reasons for non-renewal, and instead providing false and pretextual reasons.”)

<sup>11</sup> *Hasan v. AIG Prop. Cas. Co.*, 2018 U.S. Dist. LEXIS 77435, \*14, 2018 WL 2113270 (D. Colo. May 8, 2018) (“Under Colorado law, insurers have no obligation to renew policies unless a policy expressly so provides. Nevertheless, Colorado recognizes an insurer’s duty to not engage in bad faith conduct toward its insured extends to all aspects of that relationship, including renewals.” (Citations omitted.) see also *Ballow v. PHICO Ins. Co.*, 875 P.2d 1354, 1363 (Colo. 1993) (“[A]n insurer is required to act in good faith when carrying out its decision not to renew either a single insured or entire blocks of business. In this setting, we believe that good faith should be measured according to the legal standard used in the first-party claims context: unreasonable conduct and either knowledge or reckless disregard of the unreasonableness of the conduct.”)

<sup>12</sup> See, e.g., Tex. Ins. Code § 705.004.