

What to Expect When You Submit a Notice of Claim

We have all laughed about the big joke of insurance – the one thing we buy hoping we will never use it. That is, we hope we never actually have to submit a claim to the insurance company. But what if you do? Do you know what and when and where to report and do you know what to expect when you report a claim or a potential claim? The comments below are based on experience with errors and omissions liability claims but for the most part they apply to other types of commercial liability insurance, as well.

When to Report - Report early. Even if you don't think you actually have a "claim" if you are unsure or think a claim might be coming, you should go ahead and report what you know to your insurer. You can report as notice of a potential claim. Most insurers will not increase the premium charged when a policy is renewed just because the insured gave notice of a potential claim during the expiring policy period. If you do have a claim, you should not delay in reporting. Depending on what "triggers" coverage of your policy, you may be required by the terms of the insurance policy to report a claim "promptly" or in the case of a "claims-made-and reported" policy, prior to expiration of the policy. Furthermore, aside from the terms of the policy, in some states "late notice" of a claim is justification for the insurer to deny the claim even if its position has not been harmed by the delay. Additionally, even if the carrier doesn't deny coverage due to late notice, they may refuse to pay for expenses you incurred in handling the claim prior to notice to them. There is no good reason to delay in reporting a claim and there are very good reasons to report sooner instead of later.

What to Report – Report as much as you know. Explain what has happened and provide copies of all relevant documents. Upon receipt of a notice of claim, insurers have an obligation to investigate and they will likely respond to the notice by asking you to provide a clear summary of the circumstances surrounding the claim notice and to send copies of all relevant documents including relevant contracts, letters from the claimant and/or his attorney and if a lawsuit has been filed, a copy of that. Sending complete information in when providing first notice will expedite the investigation process and shorten the time between your notice to the insurer and your receipt of information about whether the claim is covered.

Where to Report – Your insurance policy should contain information about where to send notice of a claim. Sometimes you will send notice to the insurance carrier directly, other times you may be directed to send notice to another company that acts as a claim administrator on behalf of the insurer. Many risk managers prefer to send notice to their broker who will then forward the claim notice to the appropriate party. This is usually acceptable, but sending notice to the address listed in the policy ensures compliance with your obligations in accordance with the terms of the insurance contract and is thus advisable.

When Will I Receive a Response? – Most insurers will send you an acknowledgement confirming their receipt of the notice within 7 to 10 days of receipt. The insurer will give you a name and contact information for the person who will be handling your claim. Some states have strict timing requirements that apply to an insurer's response to a notice of claim. For example, in California, state regulations require that an insurer acknowledge receipt of a notice of claim immediately, and in no event more than 15 days after receipt. If for some reason you do not receive any acknowledgement of the claim notice, you should follow up to find out what happened to the notice. "No news" is not good news in this context.

What Happens Next? – Once the insurer has investigated and reviewed all relevant information about the claim, they will advise you whether the claim is covered. If the claim is covered, the insurer will advise you what to do next. They may assign defense counsel to represent you or they may contact you to discuss trying to resolve the claim without retention of outside counsel. If the claim is not covered, they will send you a denial or "disclaimer" letter. If you think they are mistaken or you don't agree with the insurer's decision you should respond to the disclaimer letter, explain your position and ask that the insurer reconsider. Different states have different rules for how an insurer must handle denial of a claim but almost all insurers are very careful in evaluating whether a claim is covered because if they wrongly deny a claim they should not have denied, they can be found liable for "bad faith" and assessed significant monetary damages.

Instead of a denial, the insurer may send you a "reservation of rights" letter. This means the insurer has reason to believe that part or perhaps the entire claim is not covered, but they are not prepared to deny the claim. Many times they will defend you subject to the reservation of rights, meaning they will hire an attorney to defend you but have put you on notice that ultimately, some or all of a final judgment against you may not be covered. The insurer often issues a reservation of rights if they do not have complete information and therefore cannot say for sure whether there is coverage. Or they may do it because the person suing you has made a variety of allegations and the insurer simply cannot tell whether the real dispute is something that is covered or not.

Conclusion – Hopefully you will never have to use your insurance. But if you do have to report a claim or potential claim, early reporting and clear and thorough communication with the insurer or claims administrator will increase the odds that you'll have a smooth and painless experience.

