

6 Ways Immediate Claims Notice Maximizes Insurance Recovery

By Jay Spievack and Tony Marcon

You might be surprised at one of the ways companies collectively lose millions of dollars each year: failing to notify their insurers immediately when a legal claim is made against them. But indeed, that is what our experience with private equity and their portfolio firms has shown us: namely, that something so simple can have a big impact on your insurance recovery and legal costs. That's why we want to share these tips on giving notice first: to trigger your primary insurer's defense reimbursement obligation, and maximize the proceeds available to you.

1. Think beyond lawsuits. A claims made policy defines a claim more broadly than just a lawsuit: it can be a written demand for monetary damages or non-monetary relief; a civil, judicial, regulatory, or arbitration proceeding; a written demand in a bankruptcy proceeding prior to the commencement of an adversary proceeding; and a tolling agreement. This isn't a complete list, but the point is that claims include far more than just lawsuits and are often made well before a lawsuit, if any, is filed.

2. Give notice and remember attachments. Remember, giving notice immediately maximizes your benefit. Also, attach the key claim documents or documents relating to the claim, such as a demand letter or email and any exhibits attached to such a demand.

3. Keep deductibles in check. If you delay notifying your insurers, the amount you spend

defending against the claim may not count toward the policy deductible and may have the effect of inflating your costs. For example, if your deductible is \$250,000 and you spend \$300,000 in defense costs before notifying your insurer, you may lose that \$300,000 forever. So your net effect could be a deductible of \$550,000 rather than \$250,000. You pay hundreds of thousands, if not millions, of dollars annually to purchase insurance, and a hardy deductible if a claim is made against you. Don't increase your costs even more by delaying your claim notice.

4. Notify first; analyze later.

Don't wait to analyze the claim before you notify all of your insurers. All this will do is increase costs. Giving notice is what triggers your coverage, so the first step is to give that notice upon receipt of a claim or a document that may give rise to a claim. To expedite claims notice, send your broker all the pertinent claims documents and ask your brokers to immediately notify all of your insurers about the claim made against you.

5. Don't take no for an answer.

Once you receive a reservation of rights letter from your insurers, that's the time to get input from your insurance broker and insurance coverage attorneys regularly representing policyholders if you haven't already done so. This letter explains their defenses that you will need to address.

6. Over-cooperate. You have an obligation to cooperate with your insurers, so use that to your advantage. After you provide notice, set a reminder in your calendar to contact your

insurers that they still owe you a coverage letter if you do not have one within 30 days. Remember, it is your job to go out of your way to protect your coverage. Regular updates to your insurers of key events, whether you have heard from them or not, help protect you and maximize your coverage.

Remember, always give notice first. It is an easy way to make sure you receive the benefits you wanted and purchased in the first place. Don't be one of the businesses that lose hundreds of thousands, if not millions, of dollars annually by not giving immediate claims notice. Follow these tips to protect your business and maximize your recovery of the insurance you purchased when you need it.

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