

Newsletter

September 2010

Do you have to make a claim?

Your client loses money because of your error, and makes a demand for compensation. Do you have to make a claim under your insurance policy?

You may not notify for several reasons. Perhaps you are not sure if the actual error/demand is insurable, or perhaps the loss you have suffered (or your client has suffered for which they will hold you liable) is very close to your policy deductible. So, this month we look at some of the pro's and con's of notifying a claim.

Firstly, do you have to notify a claim?

No. Taking into account the interests of all stakeholders, so long as you are happy for it not to be covered by insurance, it's your decision.

Should you notify the claim?

Benefits of notifying:

1. Recover some of the loss. Ideally every dollar above your policy deductible should be paid by the Insurer not you.
2. Experts handle the matter, and may, depending on the matter resolve it more effectively than you. This should not be underestimated. There is no doubt for some claims you will deal with matters in a far superior way to the Insurer (you know your business; you know your clients etc). However, for some other matters the Insurer, and their panel law firms, are better equipped to deal with it – they will resolve it faster and more cost effectively than you.
3. The process of going through a claim may reveal compliance/risk management gaps in your business model. This enables you to fix them, thus avoiding a potentially much larger issue. If you only deal with the consequence of an error but not the true cause of the error, then you have missed an opportunity to improve your risk. Insurers are very good at getting to the true heart of an issue (some of the most experienced and talented people at an Insurer are the claims department and their advisors).

Downsides of notifying/Benefits of not notifying:

1. The claim may not be paid anyway, in which case you have wasted time and effort for no result.
2. An Insurer may weigh in to a claim (and given it's their money on line) and seek/demand to resolve matters in a different, and possibly unpleasing, way to you. You may place a far higher importance on protecting reputations than the Insurer will.
3. Your record will be noted with the claim. This in turn has two outcomes:
 - There is a risk that your premium will increase because of your claims record.
 - Other Insurers may be less inclined to compete for your business. This 'lack of competition' leaves you in a weakened negotiating position.

Risks of not notifying:

If the matter blows up and becomes larger than you initially thought, you may have a problem. In other words, if you settle the matter (perhaps write out a cheque) but then it doesn't resolve e.g. further losses are alleged; further claimants come to light or whatever, you then have a very complicated situation on your hands. The insurance policy strictly prohibits you from resolving a matter or incurring costs without the Insurers consent. Failure to obtain their consent leaves you vulnerable to them denying the claim (or at least the quantum of the claim) – particularly if the initial event and any subsequent settlement crosses policy periods. So, if you deal with an issue on your own, make sure you deal with all of it and with complete finality.

Additional comments:

You may not notify the claim, but you may have a duty of disclosure at the next renewal process. In my opinion you will have to tell the Insurer about the matter anyway during the renewal process. As an ex Underwriter it would be material to my underwriting decision to know of near misses and unreported events. However, you should always present the near miss/self retained loss in the following way:

- This is what happened;
- This is what we did;
- This is what we identified as the cause of the issue;
- This is how we fixed it and why it won't happen again.

Whilst I would prefer for clients to always notify a claim, I acknowledge that there may be no correct answer to this issue, as long as your decision is informed.