



Notification of claims and circumstances: Ensuring maximum recovery

Our May and June 2013 briefings¹ focused on the issues to consider in acquiring a suitable insurance policy. However, obtaining an insurance policy is only the first step to ensuring that a business has insurance cover when it needs it. Insurance policies set out requirements and procedures for providing notice of claims and circumstances and in dealing with claims. Unless these are understood and properly followed, cover which was in place can quickly be lost.

This briefing looks at how best to avoid the pitfalls of notification requirements in insurance policies and in what ways businesses can use the notification process to maximise recovery.

Notification of claims and circumstances

Circumstances

Insurance policies often require or allow businesses to give notification to insurers long before the business actually has a claim on the policy. The usual wording is for notification of circumstances that may (or alternatively are likely to) give rise to a claim.

What is a circumstance?

Whilst the scope of acceptable claims is generally specified in the policy, relevant “circumstances” requiring notification are often undefined. This can lead to problems as the business will not necessarily know when to notify a circumstance.

A business will need to evaluate the situation and consider whether a reasonable person would conclude that at some stage in the future it may (or in some wordings “is likely to”) give rise to a claim or loss.

Unfortunately this is not always obvious and consequently notice should usually be given on a cautious basis. In essence the question may come down to “*Would you as a business wish to claim on your insurance if this situation turns into a loss?*” If you might, then you should normally notify.

If an early decision is taken that notification is not necessary that view must be revisited and reconsidered as matters develop.

Businesses may want to set up reporting processes which ensure that potential losses are captured across the business activities and logged centrally with oversight by someone with a thorough understanding of the insurance claims reporting requirements.

Often notification of circumstances is for the benefit of the insured as, at least in respect of claims made policies, once the notification is made and accepted, the policy in force at the time of notification will respond even if no actual claim is made until a subsequent policy year.

This is a critical element of claims-made policies because circumstances will likely need to be disclosed to insurers at renewal as part of the insured’s duty of disclosure (see our *briefing Broker’s duties - June 2013*¹) and claims arising from those circumstances are likely to be excluded from cover by the new insurers.

How to prevent loss of cover?

- Follow the requirements of the policy to the letter;
- Ensure the business has clear reporting lines for circumstances/claims to ensure compliance; and
- Try and exclude condition precedent wording at the policy negotiation stage and instead provide for insurers to have remedies only to the extent of any prejudice.

The policy should be checked to see if it prescribes the content or form of notification of circumstances. If so, this should be followed to avoid the notification being rejected by insurers. Particularly if notification is made just before the policy expires, the notification should be as detailed and precise as possible as well as being broad enough to cover all subsequent claims that could be made from the notified circumstances as the circumstances will most likely be excluded from the renewal cover. If possible, the business should obtain written confirmation from the insurer that the notification of circumstances is accepted or, if not, what further information the insurer requires.

Particularly coming up to renewal, the business may not have all the information it would ideally want to make a proper notification. In these circumstances, careful thought needs to be given to the content of the notification letter, ensuring that the requirements of the notification clause are complied with to the fullest extent possible.

¹ http://www.burges-salmon.com/Sectors/financial_services/insurance/Publications/default.aspx

Notification of claims

Business insurance will contain specific requirements in relation to the notification of claims under the policy which, if not complied with, can lead to loss of cover. Whether the claim is barred depends upon the terms of the policy. Obligations to notify (both circumstances and claims) may be expressed as conditions precedent to liability (as explained in our briefing *Looking after coverage - May 2013*²). Until the condition precedent is satisfied, coverage under the policy is technically not engaged. If the condition precedent is to act immediately or promptly and notification is delayed - a claim which could have been brought may be lost.

Even terms which are not conditions precedent may be relied upon by insurers to decline cover. For example where delay in notification causes prejudice to the insurer, the insurer might decline or reduce payment for the claim. Prejudice might arise, for example, where an insured does not tell the insurer about a fire till several days after the event, and the insurer's ability to properly investigate the cause of the fire may have been lost.

How to notify

The policy wording is key to understanding the extent of the notification obligations and how such notice should be given to insurers. This wording will obviously vary depending on the policy. Therefore it is important that a business reviews the specific notification requirements under its insurances, particularly:

- The extent of the circumstances/claims that need to be notified and what level of detail is required;
- The time period in which notice must be made. Where no specified time period is provided, notice should be given as soon as possible; and
- The form of the notice and to whom it must be given.

What are the benefits of notification?

Aside from broadening cover to circumstances, there are other benefits of prompt notification. A common condition precedent to under the policy liability is obtaining the insurer's consent to settlements. Insurers will also typically only pay legal costs they have consented to. It is surprising how often substantial

businesses can fall foul of these provisions. This is much less likely to happen if insurers are brought on board early. Insurers, with their vast claims handling experience, can provide valuable assistance and guidance as a loss develops. Sometimes insurers will even provide financial support when not obliged to do so by the policy if they are of the view that such support will lessen the likelihood or extent of a claim under the policy.

Conclusions

If you have a claim you want your policy to be responsive. To ensure maximum recovery, always be fully aware of the circumstances that require notification and the claims provisions and follow the required procedure.

Whilst defensive over-reporting is to be avoided, if in doubt and if you think you might want to be covered for claims arising from any incident or issue discuss with your broker/notify your insurer. The notification of circumstances may give you protection for a range of subsequent claims and therefore needs to be carefully drafted, particularly if the policy is coming up for renewal.

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² http://www.burges-salmon.com/Sectors/financial_services/insurance/Publications/default.aspx