AmWINS Group, Inc.

CLAIMS REPORTING: BETTER LATE THAN NEVER?

CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker.

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ABOUT THE AUTHOR

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ON YOUR TEAM.

A common issue in the claim process is the late reporting of claims. In some cases, a late claim can put the agent or broker's own E&O policy in jeopardy.

According to a sampling of claims professionals at leading E&O markets, while late notice allegations are not the leading cause of claims against insurance agents and brokers, they are among the most frequent causes of loss.

There are many reasons for missing a reporting deadline; however, in most cases, they will not matter. We have seen the courts stand behind the strict reporting requirements of the insurance policy. The policy is a binding contract between the two parties, and the provisions are usually very clear. We have yet to see a "sympathy clause" in an insurance policy.

CLAIM REPORTING REQUIREMENTS

An insurance policy is not tested until there is a claim made against it. Most policies are straightforward regarding the acts or events that are covered. Insurance policies also spell out the proper way to submit a claim to the insurer. Within the reporting requirements, you'll often see time requirements, as well as a list of the information that must be included, that establish sufficient notice of claim or loss.

A common coverage objection from insurers is the late or insufficient reporting of claims. In the case of claims made and reported policies, the insured may be required to give notice of all claims, either within the policy period or a post-policy grace period of 60 to 90 days. A continuous renewal with the same insurer does not remove that reporting requirement. Every renewal is another chance to miss a claim reporting deadline.

The reporting guidelines may also require the insured to identify the act that happened, the date it happened, who might sue the insured, what parties have been injured and the magnitude of the injury. If there is a demand for damages or a lawsuit, that's usually sufficient information to constitute a claim.

WHAT CAN CAUSE A CLAIM TO BE REPORTED LATE?

- The insured did not understand that a circumstance was a reportable claim and let it go beyond the deadline.
- The notice was sent to the wrong insurer, wrong layer or wrong line of coverage.
- The claim was sent to the broker and did not make it to the insurer in time.
- A claim lands on the desk of the person at the insured's company who is responsible for reporting claims but they are out of the office for an extended period, or the paperwork gets lost or buried.

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When a claim is denied as a result of late reporting, some common complaints are:

- "Our late reporting didn't prejudice the claim, so the insurer should pay."
- "The first event that evolved into this claim wasn't substantial enough to be called a claim under the policy, in our opinion."
- "We didn't want to report every potential claim because our premiums would go up."
- "The broker received the claim in time, but it was late to the insurer."
- "I've had my insurance with this insurer for seven consecutive years. How can they deny coverage to a loyal customer?"

RECOMMENDATIONS TO MITIGATE THE RISK OF LATE NOTICE CLAIM DENIALS

When insureds pay the premium for an insurance policy, they expect the insurer to pay the claim following a loss. When a buyer makes his or her purchase decision based upon an agent's recommendation and the policy doesn't respond, they often look to the agent to fix it. When a client is recovering from a loss, an unpaid claim often strains the relationship with his or her insurance advisor, which can lead to losing the client or worse.

The following recommendations can help reduce the possibility of late notice denials:

1. Encourage insureds to report claims and circumstances directly to the insurer as instructed in the policy they purchased. Highlight the reporting section in the cover letter when the policy is initially sent to the insured.
2. Ask to be copied in the client's direct notice to the insurer, so you can assist without being accountable for the timely notice.
3. Encourage the use of claims hotlines when they are included with the policy. This allows the client to talk to the insurer or claims attorney before deciding to notice or not notice.
4. When in doubt, report the circumstance to the insurer. If the insurer doesn't accept it, at least there is a record of the attempt, making it more difficult to deny the claim if it develops later.
5. Sixty (60) days before the policy expiration, have a discussion with the client about any known claims or circumstances and recommend submitting a notice on anything that could give rise to a claim prior to expiration.
6. Have and follow a well-documented plan to handle claims sent to your company rather than directly to the insurer.
7. When negotiating terms, pay close attention to the reporting requirements and push for the most liberal reporting provisions and time deadlines. It is possible to have language that makes the reporting of circumstances optional for the insured, so they are not obligated to report every possible scenario to the insurer. Reporting requirements that use "may report" rather than "must report" are a start. You may also be able to get the post-policy reporting period extended as far out as 90 days. The reporting of actual claims will still have to be done in a timely fashion.

Late reporting is something that can be avoided with a little extra work up front. One way AmWINS embodies our commitment to be "On Your Team" is to advocate on behalf of you and your clients when difficulties arise with claims. We have a dedicated claims advocacy resource available to our trading partners, as well as the market clout and strong carrier relationships through our brokers and leadership team. We can help you negotiate the wording that helps you and your clients avoid an adversarial situation, as well as advocate on your behalf with the insurers.