Johnstone Trial Law, LLC

Reporting Potential Insurance Claims

What Types of Problems Give Rise to Potential Claims?

Different types of events can give rise to the need to report an insurance claim. Insurance companies refer to these events as risks. The first step in determining whether your company needs to report a claim to an insurance company is whether an event has taken place that could trigger coverage by an insurance policy. Here is a list of potential events:

- Physical injury to a customer
- A work-related injury to an employee
- Damage to your business premises
- Lost income as a result of damage to your business premises
- Theft
- A traffic accident involving a company vehicle
- Damage to a company airplane
- A cyber attack
- Any lawsuit filed against your company, or its officers, or directors.
- Any letter claiming that you have done something wrong and seeking money or that you take some sort of action
- A cease-and-desist letter
- Property or priority disputes relating to your loan collateral
- Notice of a government investigation

Who Should the Event Be Reported To?

When an event like those listed above occurs, it is very important that it be reported to a person in the organization that has the expertise and authority to analyze it and determine whether it should be reported to an insurance company. For this reason, it is critical that companies have in place a reporting structure that funnels any reportable events to a designated person or area in a timely manner. This structure should be set out in writing and communicated periodically to all involved employees.

Once the event has been reported and key information gathered, then the organization or someone it designates, like its insurance broker[1], can evaluate it and determine whether it is an insurance claim that should be reported to an insurance company. If it is such a claim, then the broker or agent should report the claim as required by the insurance policy. Insurance policies typically provide addresses, phone numbers, fax numbers, and/or e-mail addresses

1 An insurance broker is an insurance expert that acts on behalf of the insured in obtaining insurance coverage for the company.

for claims reporting. They often will require that additional information be provided.

What is a Claim?

According to a leading insurance publication, a claim "is a demand for or obligation for payment or performance to another party (an employee or third party) who is alleging a breach of a common law or a statutory or contractual duty."[2] Many insurance policies define a claim similarly. The bottom line is that a letter claiming that your organization did something wrong and demanding money or that you take a certain action or refrain from a certain action (like a cease-and-desist letter) may be considered a claim under an insurance policy. A lawsuit will also be considered a claim.

When Should I Report a Claim?

When a claim should be reported can be a tricky question with serious consequences. With claims made policies, a "claim" must be reported to the insurance company "as soon as practicable" but no later than the end of a policy period or a designated time afterwards, such as 30 or 60 days. Since these policies typically renew annually, this reporting period means that a claim made against a company during the 2019 policy year will need to be reported no later than the end of that policy period and any extra days allowed by the policy. If it is not reported, the insurance company will take the position that it is not covered at all, even if the late reporting did not hurt the insurance company.

For example, let's say the company is sued for negligence by one of its competitors and the claim is potentially covered by a directors and officers policy. The policy requires claims to be reported as soon as practicable but no later than sixty days after the end of the policy period. The policy period runs from January 1, 2019, to January 1, 2020. If the company receives a demand letter related to the negligence in 2019, the company should report the claim as soon as it can but no later than March 1, 2020.

The other type of policy relating to when a claim should be reported is called an occurrence policy. With these types of policies, the insurance company must be notified "as soon as practicable" after an occurrence. Two types of common occurrences are "property damage" and "bodily injury." Commercial Property and Commercial General Liability policies often are occurrence policies.

For example, let's say that a company's customer trips over a power cord in the business's lobby and breaks her wrist. This event occurs in November of 2019. The business's employees should inform the person responsible for insurance matters about the incident as soon as possible. Likewise, that person should make a determination as soon as possible as to whether the claim should be reported to an insurance company. If a claim is not timely reported, the insurance company may deny it.

Because of the drastic implications of late reporting, a company should make sure that its employees know of the importance of reporting events that could give rise to insurance claims as soon as possible. It also makes sense for the company (or its insurance broker) annually at renewal or even quarterly to ask relevant employees if they are aware of any events that could give rise to insurance coverage and to make sure that they have been communicated to the appropriate people.

2 Risk Management Essentials, 2nd Ed. The National Alliance Research Academy, Risk and Insurance Studies 2014 at p. 252.

How Do I Tell if the Claim will be Covered?

Whether a certain type of claim will be covered is determined by the language of the company's insurance policies. Typically, a broker or insurer will provide a copy of the insurance policies covering a company within a few months after renewal of the policies. These policies should be kept together and in a place where the person or people responsible for insurance at the company has access to them. Here are some common types of policies that are issued to companies:

- Director's and Officer's Insurance
- Errors and Omissions Coverage (for service professionals like realtors, lawyers, doctors, and accountants).
- Commercial General Liability
- Commercial Property
- Business Income and Extra Expense
- Employment Practices Coverage
- Fiduciary Coverage
- Aviation
- Commercial Auto
- Worker's Compensation
- Cyber Coverage
- Title Insurance
- Umbrella/Excess Coverage

Unfortunately, reading and understanding the coverage contained in these policies can be difficult or impossible unless you have an insurance or legal background. Typically, these policies are lengthy and contain technical language. Furthermore, since it may not be obvious what type of coverage is involved, someone needs to be familiar with the contents of all of the company's policies in order to know whether an event or lawsuit is covered. Since most executives do not have the time or expertise for this work, the company should have access to an insurance coverage attorney as well as its broker to analyze any insurance issues when they come up.

Factors to Consider When Reporting

Just because a claim has occurred does not mean that the company has to report it to the insurance company. However, the company needs to understand that the failure to report it could result it non-coverage or denial of the claim if it is reported later. In considering whether to report the claim to the insurance company some factors the business should consider are: the likelihood of a monetary loss by the company, the amount of this loss, whether the loss would have a substantial adverse effect on the company's business, the amount of any deductible, the amount of any self-insured retention, the potential increase in premium from reporting, and potential cancellation of insurance due to too many claims. The company likely will want to consult its insurance broker in determining whether a particular claim should be reported.

How Can Johnstone Carroll Solve My Insurance Worries?

Here at Johnstone Carroll, we have reviewed hundreds of insurance policies and represented businesses and individuals in insurance negotiations and lawsuits. We can help you solve the following problems:

- One of your insurance companies has denied your claim
- One of your insurance companies is attempting to pay less than the full amount of the loss
- You have a large claim and want to make sure that you submit it properly

- Your broker has not obtained the right coverage or enough coverage
- You need help setting up a claim reporting structure