Insurance & Risk Management Services
SULLIVAN GROUP

Important Claims Information and How to Navigate the Claims Process

It is a fact of life that litigation is a routine part of today's business environment. Anyone who has been involved in a lawsuit knows that litigation can be frustrating and disruptive. For many organizations, a lawsuit involving their directors, officers and/or employees will present their first significant interaction with their Management Liability insurance company outside of the insurance placement process. Some organizations are surprised and disappointed when they experience tension or difficulties in their dealings with their insurers. However, well-advised organizations can, with advance planning and appropriate actions, avoid common claims pitfalls and increase the likelihood that the claims process will unfold without disputes or disagreements.

We can play an important role in obtaining a smooth claims resolution. In addition to providing consultative and placement services, we have dedicated professionals providing strong claims management advocacy services to assist you in the unfortunate event of a claim.

WHAT CONSTITUTES A CLAIM?

A Claim is a defined term within every Management Liability policy. Even if it is unclear whether an incident meets the definition of Claim, the incident may represent a circumstance which may lead to a claim (which may also be noticed to the policy). It is imperative that notice is provided to the insurer as soon as the insured receives notice that an individual, entity or enforcement or regulatory agency intends to make a claim or has made, filed or commenced a complaint, charge, subpoena, investigation, demand, or request for alternative dispute resolution. There are many ways that insureds may become aware of a claim including, but not limited to, service of process, mail, e-mail or news reports. These are some, but not all the items that could trigger a claim. When in doubt, insureds should notify counsel and their insurance broker of any demands against the insured organizations, its directors and executives, or its employees. Even if an insured is not sure whether a matter triggers coverage, it is best for them to provide their counsel and insurance broker with the information so that they can evaluate the matter and, if appropriate, assist in providing notice to the applicable insurers. Please note, Management Liability policies have strict provisions concerning the notice of circumstance which may lead to a claim. Providing accurate notice of these circumstances will preserve important rights in the event that a claim ultimately arises from the noticed circumstances.

NOTICE IS KEY

In general, Management Liability policies are claims-made policies specifying that an organization must provide prompt notice of claim. Each policy describes the notice procedure that an insured must follow in order to trigger the policy. We advise insureds to alert their insurance brokers – and potentially their counsel as well – when they think a claim may have been made - or when they become aware of circumstances that may lead to a claim. This will allow an all hands discussion to determine the best path forward. Generally speaking, when in doubt, it is better to provide notice. While this may have implications for the ultimate renewal of the policy, the downside of not reporting a claim can be far worse.

Prompt and accurate noticing of a claim or potential claim is imperative to ensure that the policy responds favorably. Please note, if a claim or potential claim is not provided to the insurance company in accordance with the policy's notice provisions, the insurance company may limit coverage for costs incurred prior to notifying them, or they may even have grounds to deny the claim in its entirely.
Insureds should consult with their legal counsel to review the insurer notice provisions in their policy. Our services include assisting you throughout this important process.

CONTACT

Sullivan Group
1 Mercantile Street
Suite 710
Worcester, MA 01608
(800) 649-1553
sullivangroup.com

In association with:

RT ProExec

Insurance & Risk Management Services
SULLIVAN GROUP

Important Claims Information and How to Navigate the Claims Process

Continued.

RESERVATION OF RIGHTS

When the insurance company's claims adjuster or monitoring counsel determines that a claim triggers coverage under the Management Liability policy, they will issue correspondence called a "reservation of rights" letter. This letter explains the policy's terms and conditions and outlines various exclusions which may be or become applicable.

In the vast majority of situations, although it may be worded rather strongly, the reservation of rights letter is simply a routine administrative part of the insurance company's claims handling process. We are familiar with these letters and will know how to interpret the insurer's position. Our experienced claims advocates will also be able to provide perspective on what kind of response to the letter, if any, is most appropriate. Many insurance company claims representatives actively solicit questions, comments or observations about the reservation of rights letter, and our seasoned claims advocates can be a valuable additional resource to help formulate a response. Well-advised organizations should seek legal advice from qualified counsel on these issues as well.

Coverage disputes do sometimes arise. In many situations, our claims advocates can help bring adversarial parties to the table, encourage dialog, and, where appropriate, facilitate compromise. Our claims advocates will also be familiar with many of the participants in the claims dispute, which can help ameliorate conflicts.

Please note that policyholders should enlist coverage counsel if the prospect of a real coverage dispute arises or is threatened.

RETAINING DEFENSE COUNSEL

Under most Management Liability policies for privately held organizations, the insurer has the right to appoint counsel and direct the defense of a claim. This is called a "duty to defend" policy. The insurance company maintains a panel of defense firms with expertise in the various lines of insurance covered under the Management Liability policy. The insurance companies have agreements with these firms, including reduced hourly rates and litigation management guidelines.

In many instances, an insured may already have a strong comfort level with a law firm or attorney who represents them in various matters. The insured may feel strongly that this firm or attorney can adequately represent them in the event of a claim. However, the insurance company may not agree to retain a firm that is not on the panel list.

Sometimes, a matter is not reported to the insurance company until the claim is underway and counsel has already been retained. While this may not defeat coverage entirely, the insurer will likely question or dispute defense expenses incurred prior to its acceptance of the claim and consent to counsel. In order to avoid disputes concerning defense expenses, selection of non-panel defense counsel should be discussed with the insurer prior to filing a claim, and preferably prior to binding the Management Liability policy. At minimum, the insurer will require the name, contact information and hourly rate or other fee arrangement of all involved attorneys and paralegals. Insurers are normally reluctant to deviate from their predetermined panel counsel list, absent a very good reason to do so.

It is very important for insureds to understand and follow the defense conditions contained in the policy form.

SATISFACTION OF THE SELF-INSURED RETENTION

Most policies contain a so-called self-insured retention (SIR) - this is analogous to a deductible. Generally speaking, the insurance company's payment obligations under the policy are not triggered until covered defense expenses and indemnity amounts have exceeded the SIR. In most cases, this will mean that the insured will be paying the initial defense invoices on a claim.

CONTACT

Sullivan Group
1 Mercantile Street
Suite 710
Worcester, MA 01608
(800) 649-1553
sullivangroup.com

In association with:

RT ProExec

Insurance & Risk Management Services
SULLIVAN GROUP

Important Claims Information and How to Navigate the Claims Process

Continued.

The insurance company will expect to receive copies of the invoices for amounts within the SIR to determine whether the SIR has been satisfied. A common coverage question is whether the payments for certain expenses satisfy the SIR. Costs incurred for coverage advice, or in connection with unrelated or uncovered matters, will not satisfy the SIR. This is another area where prompt communication can avoid later problems and reduce the likelihood that problems will interfere with insurance company interactions. Please note that utilizing the insurer's panel counsel firm greatly reduces the above from becoming a problem as panel counsel firms fully understand and adhere to the insurer's claims guidelines.

NEGOTIATING SETTLEMENT AND RESOLUTION

Most Management Liability policies specify that claims settlement requires the carrier's advance consent with such consent "not to be unreasonably withheld." Problems can arise when, for example, the insured or defense counsel engage in settlement negotiations or agree to settle the underlying lawsuit without first obtaining the insurer's consent, or when there is a disagreement about whether the proposed settlement amount is reasonable. The best way to avoid these kinds of disputes is for the insured to establish a collaborative working relationship with the insurer at the outset, so that by the time the lawsuit is ripe for settlement, the insurer is aware of, and in agreement with, the settlement proposal.

Claims settlement is another area where an experienced claims representative can play an important role. Our claims advocates work to ensure that the policy's requirements in connection with a settlement are satisfied. Our claims advocates can also provide an intermediary role in order to try to help the parties agree upon a claims settlement approach.

CLAIMS ADVOCACY

As this description of the claims process demonstrates, claims advocates have an important role to play in the Management Liability claims process. These are just some of the ways that we can minimize problems and increase the likelihood of a smooth claims resolution.

- Providing timely notice to the insurance carriers;
- Explaining and interpreting the litigation and claims insurance processes to insured company executives, board members and other concerned parties;
- Consulting on counsel selection and helping to obtain consent to selected defense counsel, or consulting with respect to panel counsel;
- Helping to interpret, and where appropriate, helping to formulate a response to the carrier's reservation of rights letter and other communications;
- Helping to facilitate communications with the carrier's claims representative or monitoring counsel;
- Helping to develop consensus on the desired defense strategy, including helping to obtain consent to settlement;
- Helping to facilitate resolution of, or ameliorate, disputes that may arise.

Once again, our claims management advocacy practice has experienced claims representatives that can help smooth the process and avoid problems. Our seasoned claims representatives will be familiar with all of the participants' expectations and will be familiar with the problems that typically arise.

CONTACT

Sullivan Group
1 Mercantile Street
Suite 710
Worcester, MA 01608
(800) 649-1553
sullivangroup.com

In association with:

RT ProExec