

LOSSPREVENTION LESSONS

September 2014

Provided by CalSurance® exclusively for Farmers Agents

*Keeping You
Informed & Protected*

Conditions: Claims Made and Reported and the Necessity of Timely Reporting

Insurance agents typically have a solid understanding of the products they sell and service for their clients. However, when it comes to understanding their own Errors and Omissions (E&O) policy, there is often confusion and uncertainty. If you are ever confronted with a claim, your typical role as an Insurance professional will be reversed and you will be the consumer. Therefore, it is vital that you have a good understanding of your coverage and your obligations under the policy.

Every insurance policy is a contract. You pay a premium and the insurance company agrees to defend and/or indemnify you in the event of a covered loss. However, the insurance contract creates obligations for both the insured and the insurer. One of the critical obligations of an insured is the duty to report claims or circumstances that may give rise to a claim in a timely manner. Failure to report a claim in accordance with the policy provisions can result in a coverage denial.

The majority of policies that you write are probably written on an "occurrence" basis as opposed to a "claims-made and reported" basis. This is a critical distinction and it is important that you understand the difference between the two policy forms.

An occurrence policy is written to cover claims arising out of incidents that occur during the policy period, regardless of whether the policy is still in force at the time a claim is made or reported to the carrier. For example, if the insurance carrier receives a claim in 2014 for a loss that occurred in 2012, the insurance carrier that provided coverage during 2012 must respond since that is when the occurrence took place. Most general liability and consumer property and casualty policies are written on occurrence forms.

On the other hand, professional liability policies (i.e. Errors and Omissions, Directors and Officers, Employment Practices) are typically written on a claims-made and reported basis. These policies require that you notify your insurance carrier when you first become aware of a potential loss and this notification must occur within the current policy period. Due to stringent reporting requirements, a misunderstanding of what triggers a claim or potential claim can result in a coverage denial. In addition, be aware of the retroactive date of your policy. This defines the earliest date the wrongful act leading to the loss could have occurred for coverage to apply.



An agent can be made aware of a loss through any medium of communication, whether it be a telephone conversation, face to face conversation, email, fax, letter, etc. A common misconception amongst agents is that you haven't technically been put on notice of a claim until you are served with a lawsuit. This belief is false and has the potential to cause you great financial harm.



A customer contacted her agent to procure coverage on a commercial property that she was purchasing. She indicated that she would be moving her business operations to the subject risk once she completed some renovations. The agent inspected and bound the risk. Several months later, the customer reported a theft/vandalism loss. The claim was reported to the insurance carrier. Ultimately, coverage was denied on the basis that the subject property was vacant for over 100 days. Upon receipt of the denial, the insured called the agent's office, complaining that she was never informed of the vacancy exclusion. Furthermore, she sent a letter demanding that the agency indemnify her for the damages sustained and not covered by the policy for their omission. While the agent felt sorry for the client, he simply informed the customer that there was nothing they could do for her.



Unfortunately, the agent failed to recognize that this exchange was a circumstance that could give rise to a claim and therefore, he failed to notify his E&O carrier of this potential claim. Eight months later, the agent was served with a Complaint seeking damages for the subject loss. The claim was reported to the E&O carrier and ultimately denied on the basis that the claim was not reported by the agent within the applicable policy period. As a result, the agent was left to defend himself.

In addition to complying with the Conditions of your policy, there are several other benefits to promptly reporting claims or circumstances that might give rise to a claim:

- Allows the insurance carrier to handle the claim immediately
- Mitigates the loss of a customer by promptly addressing the issue and offering a solution to the problem
- Preserves the accident scene and evidence, allowing a thorough investigation while facts are fresh and potential witnesses are available
- Ensures that legal requirements are met and reduces the chance of litigation
- Reduces the overall cost of claims, which translates into lower overall program rates in future years

All agents should educate themselves and their staff on the obligations under their E&O policy. The conditions section is a good place to start, but as an Insurance Professional, it is recommended that you read and understand the entire policy. Make the policy available for your staff members and make certain that everyone understands when a claim should be reported. Note, it is best to err on the side of caution when it comes to reporting a potential claim.

A small contractor asked for a commercial property policy with limits of \$100,000. The policy was written as requested and there was no further contact between the agency and the customer for over a year. Then, the customer reported a theft of some specialized power tools directly to the insurance company. Upon investigation, the insurance company adjusted the loss and issued a payment for \$2,000, the sub-limit for tools which were not scheduled on the particular policy. The customer was shocked that he was not compensated for the full value of the tools, which he estimated at roughly \$18,000. He alleged that his agent assured him that his claim would be covered in full and never disclosed that there were sub-limits for certain items.

After exhausting efforts with the insurance company to have them reconsider their position, the customer sent the agent an email demanding that his agency pay him the difference between what was paid and the replacement cost of the items, \$16,000. The agent felt that the allegations were meritless and failed to respond. After several months, the agent assumed that the customer had dropped the issue. However, just a few days before the statute of limitations expired, the customer engaged an attorney and filed a lawsuit. The agent reported the claim to his E&O carrier. Unfortunately, during the course of the investigation, the insurance carrier discovered that the agent had received a demand almost 2 years prior to reporting to the insurance carrier.

The example above illustrates another situation where coverage was compromised because the agent failed to understand what constitutes a claim. If he had read the terms of his E&O policy or contacted the E&O broker, he would have realized the need to report this incident at the time it happened, not a couple years later when he was served with a lawsuit.

LOSS PREVENTION TIPS

Understanding your obligations under your E&O policy is critical. One of your key obligations is to promptly report claims or circumstances that might give rise to a claim against you. If there is any doubt, you should consult with your attorney or insurance broker to discuss the specific issues and make certain that you are complying with the terms and conditions of the policy. Lastly, prior to the end of each policy period, you should touch base with your producers and sales staff to determine if there are any claims or potential claims that should be reported to the insurer.



681 S. Parker Street, Suite 300
Orange, CA 92868

Phone: (866) 893-1023 Fax: (866) 893-1198

E-mail: farmers@calsurance.com

California License # 0B02587