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Late Reporting: The Ultimate Sin?

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The number one reason that carriers deny coverage is late notice. Most management and professional policies are issued on a claims made basis. There are 2 types of claims made policies: 1. Claims Made and Reported, and 2. Pure Claims Made policies. Pure claims made policies and claims made and reported policies both require that the claim be made during the policy period. However, claims made and reported policies require that the claim also be reported during the policy or the extended reporting period. In contrast, pure claims made policies generally allow reporting "as soon as practicable". As most management and professional policies are written on claims made and reported forms, this article raises the big issue with those policies - a delay in reporting a claim to the carrier could result in a claim denial - even if coverage otherwise would have applied.

The situation that I have seen over and over again, is when an Insured receives notice of an administrative action or demand letter, and thinking it has no merit, the Insured decides to handle it internally. The mindset often is that meritless actions go away without litigation (right?...). Six months after receipt and response to the letter/action, the insured receives a lawsuit. At that time, the Insured tenders the lawsuit to their carrier. Upon review, during the 6 month lag time between notice to the insured and notice to the carrier, one policy period has expired and the Insured is now 4 months into the next policy period. The prior carrier denies coverage (as the Claim was reported after their Policy Period expired) and the current carrier denies coverage (as the Claim was made prior to their current Policy Period). To make matters even more painful, even if the prior and current carrier is the same, coverage can potentially be denied under both policies due to the late reporting (Ouch...).

I understand that Insureds are busy running their businesses and that tendering notice of an action to a carrier can often fall through the cracks. Late notice often happens because the person who receives or knows about the claim is not the same person that knows that they have insurance that might cover that

claim. In order to avoid such situations, Insureds need to be vigilant about putting mechanisms in place to make sure all notices funnel through the right corporate channels to ensure that timely notice can be made and otherwise valid insurance is not forfeited.

On the bright side, I note that claims made policies often have provisions that allow for the reporting of a circumstance that might give rise to a Claim. These provisions are often referred to as Notice of Potential Claim, Notice of Circumstance provisions or simply an incident sensitive form. The language of these provisions allows an Insured to provide notice to the Carrier during the policy period, of a specific event that is not yet a "Claim". Such notice, with sufficient information, can be deemed to be notice of an actual Claim, even though the actual "Claim" isn't made against the insured until a later date. For example, if an employee was terminated and during the exit interview threatened to sue, such an incident might be noticed to a carrier as a potential claim.

TAKEAWAY:

The number one reason that carriers with claims made and reported policies deny coverage is late notice. Take advantage of the policy you have purchased. Do not hesitate to put a carrier on notice of what is, or what may be, or what could evolve into a Claim. Too many insureds I know have played amateur coverage lawyer, and decided an incident would not constitute a Claim under their policy only to find out at a later date that the incident did indeed rise to the level of a Claim. At that time they tragically learn that the applicable reporting period had passed, and an otherwise covered claim has now been denied. Don't let it be you! My mantra: when in doubt, Report, Report, Report! In addition, don't hesitate to consult with your Socius broker who can help guide you as to when and how to report actual or potential Claims.