



Top 10 Reasons Insureds Don't Report Claims Or Circumstances (Part 1)

August 19, 2014 | [Claims, Policyholder Protection](#)



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In your professional or your personal capacity, you probably have several opportunities to consider whether to report something to an insurance company. In many instances, there would be very little downside and plenty of upside potential if you go ahead and tell the insurer. Here are 10 reasons why insureds don't report – and why those insureds may want to think again.

1. This demand letter is just an idle threat, and the allegations are meritless.

The demand may come from an unimpressive lawyer, from an assistant regional manager of widget production or from an individual whose writing would get an F in elementary school. Or it may appear that there are no actual demands for monetary damages. You may be absolutely right that you will prevail against these meritless allegations. But it may still be expensive to defend. If you get frustrated after paying your lawyers for months of litigation that doesn't seem to be going away, you may be surprised your insurance company asserts that it is too late to shift the problem to your insurance company. It may raise the "late notice" defense to coverage and potentially may be able to defeat your claim for coverage.

2. It's already too late.

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This is the flip side. Others at your company were managing the lawsuit for months before bringing it to your attention, and they didn't notify the insurer. Don't give up. Even a seemingly lengthy delay is not necessarily too long under the circumstances. Also, many states consider or even require the insurance company to prove that it was prejudiced by late notice. If the insurer's interests weren't harmed by the delay, it may still have to cover the lawsuit.

3. It's cheaper to handle it ourselves because our premiums would go up.

If you know what the additional premium will be, you're an actuary. An extraordinarily well-informed actuary. One who can accurately predict, at the outset of a problem, exactly what it will ultimately cost to resolve and the premium increase that would result. And therefore can state with confidence that the problem will be resolved for less than the premium would increase. That seems pretty unlikely. Property losses and third-party claims can become much more expensive than originally anticipated, far exceeding any premium hike imposed by an insurer as a result of the claim experience.

4. It's completely within the deductible or self-insured retention.

This is similar to the previous reason, but it starts from the very real premise that, under some policies, the policyholder actually does have to handle at least some portion of the matter. If you can get a body shop to repair your car for less than the deductible on your auto insurance, you're probably right not to report it to your insurer. But if you have a CGL policy with a \$100,000 Self-Insured Retention ("SIR") or deductible, there's a lot more to think about. Does the insurer have the "right and duty to defend"? Do defense costs count toward the SIR? Are plaintiffs making related claims arising out of a single occurrence, the costs of which can be aggregated to erode the SIR? While grappling with those questions, perhaps it would be wise to have put your insurer on notice.

5. I did give notice – under the current policy.

That's great, especially if you gave notice under a "claims made" policy. But if the events happened or began in the past, one or more earlier policies may be applicable. It could be an "occurrence" policy, or it could be a "claims made" policy with an extended reporting period or "tail". Consider giving notice under all of them.