10 Tips for Getting Claims Paid

by Robert M. Horkovich

Getting claims paid can be difficult and often, the larger the claim, the more difficult it can be. In many cases, it seems like there is an invisible "seven-digit" exclusion written into all insurance policies. If the claim is $1 million or more, there is greater resistance to payment, in part because insurance companies often refer larger claims for review by counsel. This often leaves the policyholder fighting for payment of claims that should not be disputed.

Set out below are 10 tips for getting claims paid. Although there is no guarantee that if all the steps are followed, the claim will be paid, following these steps may help minimize the resistance.

1. Give Notice Early, Broadly and Often

Some first party insurance policies require the policyholder to give notice of a claim within a fixed period, sometimes as short as a week. Therefore, when a claim arises, give notice as soon as possible under as many insurance policies as may be applicable. And supplement that notice when information about the claim becomes more available and developed.

Risk managers sometimes fear giving notice, as they believe it may impact renewal. The loss should be identified anyway in the renewal application to prevent a misrepresentation/concealment defense.

Although almost all states require that the insurance companies demonstrate prejudice (or that the failure to give notice was a material breach) if they seek to deny coverage on grounds that the policyholder failed to provide timely notice, the better practice is to give notice early, broadly and often. This minimizes the chance that late notice will become a defense to coverage.

2. Assemble the Right Team

Your team should include people familiar with your loss and with your insurance coverage. In addition to people from risk management, consider who else might be needed to assist the risk manager: accounting firms, forensic accountants, actuaries, loss adjusters, insurance brokers, engineers, environmental consultants, insurance archaeologists, and maybe even policyholder coverage counsel.

3. Gather All Information

Gather and inventory your company's insurance policies. Now (before you have to handle the loss) is a very good time to gather and inventory all of your company's insurance policies. Index them. Your insurance broker may help. Having this done before you have to handle the loss will make providing quick and broad notice easier.

Gather all information regarding the loss. Notify all company departments that have documents that may be pertinent to the loss to preserve those documents. Suspend document destruction procedures applicable to those documents. Scan them. If hard copies of company records have to be destroyed, have someone review the documents before destruction so they can certify no pertinent records were destroyed. The duty to cooperate means keeping and turning over pertinent documents. Again, prejudice rules generally apply, but doing it right may help eliminate the argument.

Remember reinsurance. You may think that your insurance company's request for information is unreasonable, but try to remember that your insurance company may be trying to satisfy the information demands of its own reinsurance company. Try to accommodate reasonable requests. If the requests for information are unreasonable, write to your insurance company and ask what it really needs to confirm coverage.

4. Document Everything

Document all communications with your insurance company including all requests for information, all conversations, what the insurance company is doing and what you are doing. Always have the last word -- even if it is to say that you disagree. Why? If the claim is denied, you will need this written record as evidence.

5. Avoid Open-Ended Standstill Agreements

Your insurance company may say it needs time to investigate the loss and wants a standstill agreement to preserve everyone's legal position. Avoid these if possible. You give up leverage to force your insurance company to conduct a timely investigation.

If you have to enter into a standstill agreement -- and they sometimes are necessary to minimize legal costs -- set a clearly defined and realistic deadline. Anything later just gives the insurance company additional "float," as Warren Buffet calls the time lag between collecting premiums and paying claims. Do what you can to get your money quickly so that you can invest it and make profits rather than giving an added bonus to Warren Buffet. Don't give your insurance company a license to stall.

6. Quantify the Loss

Identify and document amounts spent on the loss or the liabilities. Include defense costs for liability matters, in-house time and expenses if they can be recorded, and past, present and future loss amounts. Consider using those with expertise in identifying all types of losses that might be included. For future losses, consider using a forecaster or actuary. Such losses then can be reduced by a present value discount and included in your negotiations. Try to consider all possible contingencies.

7. Value the Insurance Asset

Look to the policy limits. Examine all potential forms of coverage and all potentially applicable coverage grants within all potentially applicable policies. Don't forget endorsements. Look at the ultimate net loss clause and supplemental payments clauses in liability policies and consider what costs your company has incurred that fall within those coverage grants.

On the negative side, consider deductibles and self-insured retentions. Look at potentially applicable exclusions and exceptions to those exclusions. This will help you shape your company's loss.

When valuing how much you may get back to cover your loss, consider the financial viability of your insurance companies. Taking a discount and getting paid now may have value if your insurance company has a clouded financial posture.

Legal/policy analysis. Look at the loss valuation and compare it to all the forms of coverage available. Apply the losses as best you can to maximize coverage. Consider forum sensitivity. Does it make any difference if your claim is pursued in one jurisdiction or another? Compare state provisions and precedents regarding late notice prejudice, application of the pollution exclusion, consent to settle exhaustion of underlying coverage, or other factors as applicable. Consider which jurisdictions would suit your claim best.

Is there a mandatory arbitration provision in the policy? A choice of law provision? These must be taken into consideration.

8. Set The Target/Demand

Calculate each insurance company's maximum potentially applicable coverage separately. While you cannot obtain a windfall or double recovery, there is no reason why you should not start out by explaining to each insurance company what its exposure is.

9. Negotiate the Claim

What do you want to achieve? Cash now? A payment stream in the future? A coverage in place agreement confirming coverage for future events? Take these factors into consideration.

Negotiate with each insurance company separately. Generally, negotiations that bring all insurance companies together at the same time do not result in prompt settlements. The insurance companies generally get together to share theories of defense to coverage. That does not promote payment of the claim.

Do not press weak claims. Weak coverage claims tend to hurt, not help, claim payment.

Try to get the right people to claim settlement discussions. Ask the broker to help make sure that the appropriate claim representative is there. Make sure you have appropriate settlement authority.

Remember to mind your manners. By the time you have gotten to this point in the payment of your claim, you rightfully may be very frustrated and even angry. Try to put that anger aside for purposes of resolution of the claim. It is harder for the insurance company to pay if there is personal anger and animosity.

10. Be Careful in Documenting the Settlement

Focus on the scope of the release. Try to limit the release just to the claim being paid. If the insurance company asks for more (tying is an unfair claims practice under the NAIC Model Unfair Claims Practice Rules adopted in most states), then make sure you can quantify the value of the additional coverage you are giving up.

Make sure the payment is net of retrospective premiums adjustments or any other charge back. The last thing you want is a bill from the insurance company.

Be very careful of indemnification provisions. They easily can eat up the claim payment proceeds you are getting.

To help you through the whole process, be persistent. Don't give up. Above all, that you will allow you to maximize the value of your claim.

***Robert M. Horkovich** is managing partner and shareholder in the New York office of Anderson Kill & Olick, P.C. He is a trial lawyer with substantial experience in trying complex insurance coverage actions on behalf of corporate policyholders and has obtained over $5 billion in settlements and judgments from insurance companies for his clients over the past decade.*