

Four Things Every Contractor Should Know About Insurance

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Proper insurance is a critical risk-management tool for contractors, design professionals, and project owners. Disputes are an inevitable cost of doing business, and the importance of understanding the types of insurance available and which claims might be covered has never been more vital for a business's bottom line.

Here are some tips to make sure your business is ready when, not if, an insurance claim comes its way.

1. UNDERSTAND THE BASIC INSURANCE TYPES

There are two primary types of insurance that every contractor should have:

First-party insurance covers loss or damage sustained by the insured. Builders' risk insurance is a common form of first-party insurance for contractors. It covers a builder's costs for repairing damaged, unfinished structures or replacing building materials if inclement weather, fire, or theft hit a construction site, though sub-limits may apply.

Third-party insurance covers the insured for claims or suits by third parties alleging that they suffered damage caused by the insured. Commercial general liability insurance can cover the costs associated with these claims. But another type of coverage that every contractor should consider is Products-Completed Operations liability coverage, which covers liability for your work at a project after the work is completed.



Contractors should determine if their CGL policies include Products-Completed Operations liability coverage, and if not, consider obtaining a stand-alone policy.

2. DON'T OVERLOOK ANY SOURCES OF COVERAGE

In the event of a claim, it is important to check all of your company's insurance policies because multiple policies might provide coverage for the same claim. This includes looking at all policies across various policy periods because some coverage is triggered based on when an injury occurred, and other coverage will be triggered based on when the claim is made. As a policyholder, it is best to assume that every policy might provide coverage and review all policies with an open mind.

Be sure to consult existing policies where your company may be named as an additional insured and check all contracts and indemnity agreements, as they may have provisions promising to provide coverage for claims or losses as well. To be prepared for the worst, it is important to request and keep copies of the full policy and indemnity agreements when named as an additional insured or indemnitee.

3. PROVIDE TIMELY NOTICE

Most policies require that you give the insurer notice as soon as is practicable once you are aware of a loss, suit, or claim, but every policy is different, so it's best to closely review each one. Some policies require insureds to report a notice of circumstances (i.e., notice of anticipated claims). Failing to comply with a policy's notice requirements can result in your insurer disputing coverage for pre-notice costs and expenses, or, in some cases, disputing coverage altogether.

While many jurisdictions require an insurer to show it was "prejudiced" before denying a claim based on late notice (i.e., that the insurer suffered actual harm based on the late notice), this is not always the case, so providing notice quickly under every policy that could potentially provide coverage is critical. Insurance coverage attorneys may be able to help analyze which of your policies may provide coverage for a particular claim, and brokers are often helpful resources to assist with providing notice to the insurance companies.

4. EVALUATE THE INSURER'S RESPONSE

When a claim is filed, your insurance company's response will likely fall into one of three categories: accepting coverage unequivocally; accepting coverage under a reservation of rights; or denial of coverage.

Accepting coverage unequivocally, which is becoming less and less common, means your insurer agrees to pay for all defense fees, judgments, and settlements up to the limits outlined in your policy. The insurance company will typically appoint an attorney from a panel of prescreened law firms (known as panel counsel) who will provide regular reports and updates to the insurance company as the claim progresses.


Accepting coverage under a reservation of rights means that your insurer agrees to pay for your defense but is reserving the right to deny coverage at a later date based on the terms of your policy. Insurers routinely send ROR notification letters because failing to send one can waive their right to deny coverage later. It is important to review ROR letters carefully because certain reservations may trigger the right to independent (or Cumis) defense counsel that you can choose yourself but will still be paid for by the insurer.

Unlike panel counsel firms, which are often obligated to share information with your insurance company that could jeopardize coverage, independent counsel's duty is only to the insured. Insurers tend to push back on hourly rates for independent counsel, so it is important to understand the relevant rules in your jurisdiction or to consult an insurance coverage attorney for assistance.

Finally, an insurer will deny coverage for a claim if it believes that the claim doesn't fall within the terms of your policy or if it asserts that an exclusion outlined in the policy bars coverage. You have several options to consider when responding to a denial of coverage. In some situations, proceeding with the underlying issue and addressing the coverage dispute after the claim is resolved is the better option.

This option allows you to litigate the claim without having to consult your insurance company about litigation decisions.

A deferred response doesn't generally waive the right to challenge a wrongful denial of coverage, but for many businesses the out-of-pocket expense of resolving a claim can be prohibitive. Regardless of when a denial of coverage is challenged, it is critical to be mindful of deadlines to file suit or commence arbitration, as an untimely claim is often unsalvageable.

Most importantly, don't be afraid to ask for help. Coverage attorneys and brokers are an invaluable resource in assisting with every step of an insurance claim. 



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