



Top 10 Reasons Insureds Don't Report Claims Or Circumstances (Part 2)

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Part 2 of Top 10 Reasons Insureds Don't Report Claims or Circumstances

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6. It's not covered.

Your broker/agent, your risk manager or your trusted colleague in the legal department may tell you that the new lawsuit on your desk isn't covered. You may review the policy and come to the same conclusion. But if you weren't completely sure what every provision of the policy actually *would* cover, you can't be sure it won't cover that new lawsuit. You also may not be aware of possible coverage under another type of policy or one from a different time period. Your friendly outside coverage counsel may be able to help by taking a fresh look, but you can also just go ahead and give notice. There are good, honorable insurance companies and claim representatives who will consider all the possibilities and recognize at least a duty to defend that new lawsuit.

7. We're an additional insured, and the named insured knows about the claim.

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If the named insured is a co-defendant with you, or if you tendered the lawsuit to the named insured, good. The named insured should notify its carrier, and that may be enough to trigger the insurance company's obligations to you as well. But as an additional insured, you have the right to submit your own claim, and it's generally safer to do that than rely on the named insured to do it for you. Expect that the insurance company will assert that if it didn't receive notice from you regarding the claim against you, it probably can't help you.

8. We already chose to take coverage from another insurer.

You read paragraphs 6 and 7, and you correctly determined that more than one policy covers the same claim. Great. You know that in your jurisdiction, you have the right to choose which of the multiple policies must defend and pay for the claim. Wonderful. But you may later need the other policies to kick in as well. You can *tender* to one insurer and give *notice* to the others at the outset. That notice should help preserve your rights under the other policies.

9. We don't have the policy.

It's perfectly understandable that you don't have a particular policy, for example because the policy period was many years ago or because you're just an additional insured on someone else's policy. But that doesn't preclude giving notice, and you should anticipate that an insurance company will assert that is not a good enough response to a "late notice" defense. Your notice letter can even request that the insurance company send you a copy of the policy. If you're the named insured and the insurance company has the policy, it has to honor your request for a copy. And if you're an additional insured, you can ask the named insured and the insurance company for a copy. The worst they can do is say no, and if you wind up in coverage litigation, they'll have to produce the policy to you anyway.

10. I'm just filling out an application; I haven't even bought a policy.

Answer all the questions on an insurance application completely and truthfully. Understand that if you are seen as having withheld or misrepresented information about a percolating matter, you run the risk that could doom coverage for that matter if it later develops into a real claim. It can even lead the insurance company to assert that it has the right to cancel or rescind the entire policy.