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Timely Notice: Procrastination Proves Costly in Claims

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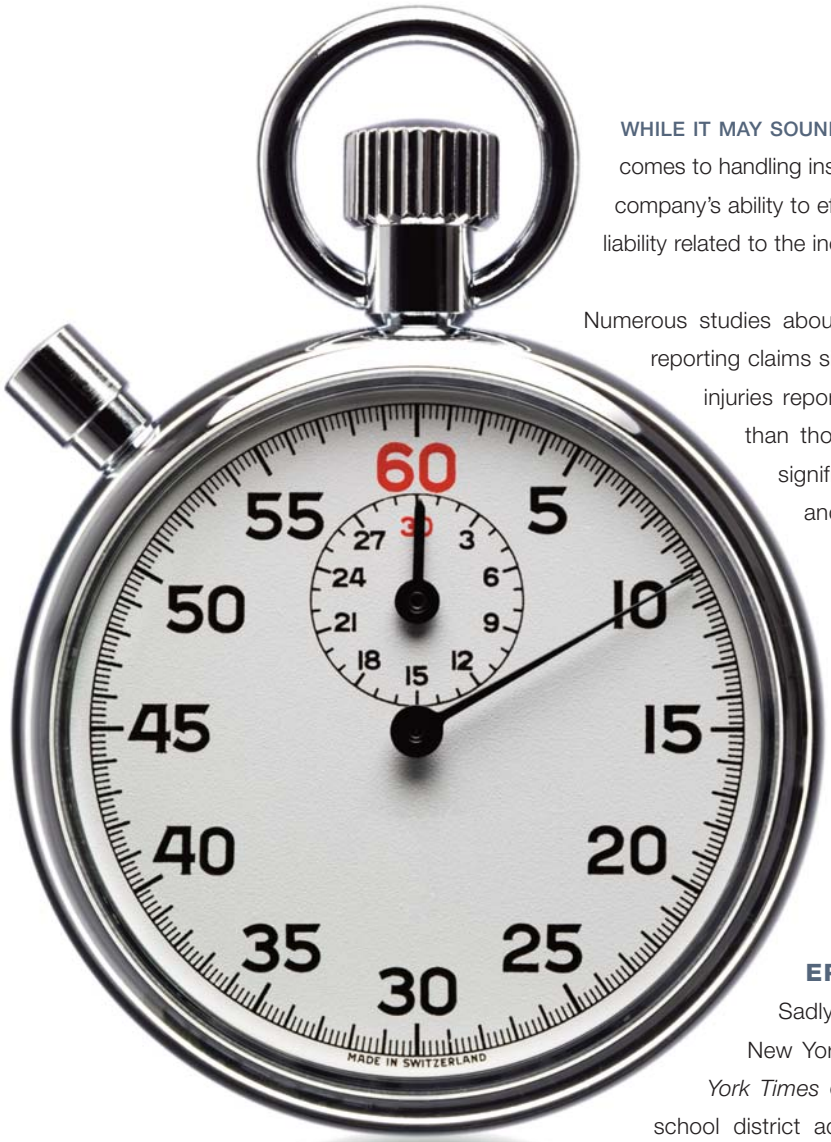

WHILE IT MAY SOUND CLICHÉ, TIME IS OF THE ESSENCE – ESPECIALLY WHEN IT comes to handling insurance claims. Time has a powerful influence on an insurance company's ability to effectively minimize costs related to a claim, control a business' liability related to the incident, and, of course, pay for a claim in a timely manner.

Numerous studies about workers compensation claims have shown that a lag in reporting claims significantly increases associated costs. One study found that injuries reported a month following an injury were 45% more expensive than those reported in the first week. Moreover, delayed reporting significantly increases the likelihood of longer periods of disability and higher rates of attorney involvement and litigation.

Even incidents that initially appear routine in nature can escalate into significant claims as time elapses. A small fuel oil spill may result in a bigger environmental cleanup if action isn't taken quickly. An accurate auto accident investigation may be impossible with the passage of too much time. Additionally, if there is significant delay in notifying an insurer, an insurer may take the stance that its defense was prejudiced by lack of opportunity to investigate and settle a claim, the insurer may be able to deny coverage.

EPIC EXAMPLE

Sadly, the case involved the Roslyn School District on Long Island, New York is a textbook example of untimely claims filing. The *New York Times* covered the insurance ramifications of this case involving a school district administrator's embezzlement of $250,000 in school funds (Failure to File Timely Insurance Claim May Cost Plundered School System Millions, December 5, 2005). Concern about the embarrassment and damage to the school district's reputation, as well as the administrator's promise to repay the money taken, prompted the school board to handle the problem internally rather than

disclosing the theft to the authorities and the loss to its insurers. Two years later, the county district attorney, however, learned of the embezzlement and opened an investigation.

When the superintendent learned of these investigations, he convinced the school district's outside accountant to change data in the district's computer system and then provide false documents to the investigators. In the end, the administrator, the superintendent, and the accountant pled guilty to various crimes, including larceny that exceeded $11 million and subsequent cover-up.

The board's decisions not to disclose the loss in 2002 compromised the district's ability to collect from its insurers, who denied coverage for the loss because they were not promptly notified. Additionally, the new school board sued former board members and the district's former attorneys, stating that late notification jeopardized the district's ability to collect on the insurance coverage, including the denial of claims under the directors and officers' liability insurance coverage for the former board members.

UNDERSTANDING POLICY PROVISIONS

Few agreements require a higher degree of "good faith" from all parties involved than an insurance contract. The insurance company has little chance of knowing when or how loss will occur, which alone creates a strong reliance on the good faith of its client to give timely and accurate notice when a loss occurs. It is vitally important to understand the practical mechanics of claim adjustment and policy contract provisions in a company's insurance policies that bear directly on claim reporting practices. An insurance contract requires that the insured company fulfills certain obligations and performs certain duties and one of the most significant of those duties is to give timely notice of claim or loss.

Policies written on a claims-made basis— such as professional liability coverage like Directors & Officers and Employment Practices liability — require that insureds report a claim in a timely fashion. Coverage might stipulate an insured's reporting requirements such as: "The Insured shall as a condition precedent to the obligations of the Company under this Policy, give written notice to the Company *as soon as practicable...*"

General liability policies which are most often offered on an occurrence basis might say something like: "You must see to it that we are notified as soon as practicable of an 'occurrence' or an offense which may result in a claim." Property policies will also most likely state that the insured must "Give prompt notice of the loss or damage." Of course, it is clearly in the insured's best interest to report property losses quickly to assure funds are available to fix damage or replace property. If notice is delayed in the case of property coverage, valuable proof of loss could disappear, jeopardizing the amount of recovery. In some cases, such as in equipment breakdown (boiler & machinery) policies, the report date of the claims is determined to be the date of occurrence. Therefore, a delay in reporting a claim could affect business interruption losses.

COURTROOM DEBATES

When an insurance coverage claim is disputed due to "late notice," the definition of what is practicable or reasonable notice is left up to the courts... and decisions have varied. Some jurisdictions hold the view that unexplained delays in reporting justify denial of the claim outright. In some jurisdictions an insurer must prove "prejudice" in order to deny coverage for late reporting. In recent years, several US jurisdictions have moved away from the strict enforcement of the timely notice requirement. In these jurisdictions, the burden is placed on the insurer that it was prejudiced by the late notice. For instance, in 2009, New York state amended its Insurance Law 3420 which placing more responsibility on the insurer to show that its handling of a claim was hampered due to late notice.

When an insurance coverage dispute results based on late notice, what is practicable or reasonable notice is left up to the courts and decisions have varied.

Some debates on what constitutes a timely filing have even made it as far as the US Supreme Court. Most recently, the Supreme Court ruled unanimously that 6,000 black Chicago firefighter applicants can proceed with their discrimination lawsuit against the city because their claim *was* filed in a timely fashion. To file suit under Title VII of the Civil Rights Act of 1964, plaintiffs first must file a charge with the Equal Opportunity Employment Commission. Depending on the state, the allegation must be filed with the EEOC within 180 or 300 days after the alleged unlawful employment practice.

Attorneys for Chicago argued that the EEOC charge was "untimely" because it was filed March 21, 1997, or 420 days after notice of the test results were sent. The plaintiffs argued that the EEOC charge was valid because it was filed within 300 days after Chicago began hiring from a list of firefighter candidates they deemed well-qualified in May 1996.

While the district court judge ruled for the firefighters, the 7th U.S. Circuit Court of Appeals overturned the ruling in 2008 and sided with the city, that the claim was filed too late. On May 24, 2010, the U.S. Supreme Court overturned the appeals court. According to the Court, "We consider whether a plaintiff who does not file a timely charge challenging the adoption of a practice — here, an employer's decision to exclude employment applicants who did not achieve a certain score on an examination—may assert a disparate-impact claim in a timely charge challenging the employer's later application of that practice."

No matter what jurisdiction or how high up a case might get in the courts, the basic fact is that late notice of a claim delays resolution for both the insured and its insurance company. Timely and accurate claim reporting is the catalyst for responsive and quality claim service. Quite simply, the earlier an insurer knows about a possible loss, the easier it is for it to take corrective actions, negotiate a resolution, or prepare a defense. Loss of time, money, and reputation in dealing with a lawsuit can all be minimized with timely notice. When reporting an insurance claim, especially to achieve optimal results and good, quality claims service, there's no room for procrastination. XL

About the Author

Jim DiVirgilio is head of Claims Operations for XL Insurance's North America Property & Casualty unit. "XL Insurance" is the global brand used by member insurers of the XL Group plc's (NYSE: XL) insurance companies. XL Group plc, through its subsidiaries, is a global insurance and reinsurance company providing property, casualty and specialty products to industrial, commercial and professional firms, insurance companies and other enterprises on a worldwide basis.

Overcoming Challenges to Reap Rewards

A Q&A WITH PAUL TUHY ABOUT XL'S GLOBAL CLAIMS MANAGEMENT SYSTEM

IN TODAY'S BUSINESS ENVIRONMENT, survival often requires organizations to change and make best use of new technologies, even if making the switch requires investment and heavy work. That is very much the case for insurance companies, especially for their claims departments which heavily rely on technology to manage clients' claims.

Recently, XL Insurance initiated the global roll-out of a new global claims management system with the help of Accenture. INsight spoke with Paul Tuhy, head of Global Claims for XL Insurance, about the challenges of implementing a global claims system and what benefits he expects to see in the long run.

The insurance industry continues to evolve, largely driven by changes to consumer preferences and emerging technologies. How have these changes affected the claims function?

Paul: We live in a world where we can immediately retrieve information, all times of day, from all over the world. Accurate

and timely information is a significant customer service driver and getting real-time claims information is not exempt from that customer expectation.

How an insurer delivers on its promise to pay claims — the effective handling of the claim — defines a customer's experience with its insurer. Thus, an insurer's efforts to adopt efficient and effective claims management processes and systems are first and foremost very visible to its customers and in many instances, form the basis of a customer's experience with their insurer. Replacing aging, incompatible claims administration systems puts insurers on strong ground to rapidly adapt to cyclical market cycle changes or changing business needs. Most importantly, it allows insurers to improve customer service, delivering on their claims-paying promise quickly, accurately and cost-effectively.

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Likewise, we expanded business to various parts of the world and so have our clients. So we have to be prepared to carry out its claims-paying promise on a global basis. Claims managers must deal with local language and jurisdiction issues as well as fulfilling the need to manage their international clients' claims in a uniform manner, no matter where they occur.

What's the biggest obstacle in going global with claims technology?

Existing computer systems or legacy systems present the biggest obstacles. Claims management was one of the first insurance processes to be computerized and unfortunately, many early claims handling systems are still in operation. We had six legacy IT claims platforms that we had to deal with but other insurers have more.

Especially as insurers, like XL, have merged and acquired new units around the world, pre-existing claims management systems have not as easily meshed together as other business operations may have. Attempts to implement off-the-shelf software solutions may have been an immediate fix for some claims problems but now add to the difficulty in improving efficiency.

How did XL Insurance overcome this challenge then?

Our relatively flat organizational structure did help. Despite global marketplaces where borders in doing business are less visible, insurers have their own borders to contend with. Organized by product lines and often further defined by geography, insurers' claims management functions often fall into those separate silos supporting each individual product line. As the old adage goes, too many cooks can spoil the broth. Therefore, insurers structured by product line business units will often provide their own individual input on their own claims management issues. The result is that implementation of new systems often fall victim to significant scope creep, impeding process and running up costs. In dealing with these obstacles, insurers, like XL Insurance, with a flatter management structures or more centralized claims team often have a stronger advantage here and are able to implement system changes more effectively.

Most employees and even managers may be reluctant to leave a familiar business process even if the new way is deemed more efficient. How did you gain staff support?

Training claims personnel to use a new claims management system is one thing, but training them to think differently or change their behavior is something totally different. Pinpointing the benefits of a new system, for instance, the annual cost savings achieved by less paper or digitally-achieved storage, and then clearly communicating realized savings throughout the organization has helped. We also managed expectations – communicating that change takes time and hard work to achieve. Together we took time to recognize small achievements in the process and continue to build enthusiasm throughout the implementation process.

What makes XL's Global Claims System distinct?

How will clients benefit?

Timely and accurate information is the biggest benefit to clients which they can use to aid in their own risk management efforts. Today's improved claims technologies allows insurers' claims managers as well as their clients to access real-time information quickly to make more immediate decisions. In claims management, quick thinking and decisions can play an important role in containing claims costs. Access to this information also aids insurer's own risk management efforts allowing insurers to evaluate its aggregate risk on any one company or in any given geographic region.

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How is the new system going to help XL Insurance?

An insurer's effective and efficient management of claims has a tremendous affect on its own profitability. Claims losses and claims handling expenses form the largest share of P&C company expenditures, representing some 70 percent of an insurance company's expense base in the form of claims payments and the cost of processing claims. Using the most efficient, state-of-the-art technology would seem to be a "no brainer" to help insurers contain costs, make the most of their staff resources, track claims on a global basis and improve internal efficiencies to improve customer service. It is also important that we as a company realize this is not just a system to benefit the claim function, but rather a tool that can assist all company areas to achieve better efficiency. For example, loss trend analysis derived from better claim coding can produce timely information to assist underwriters in their review of individual or classifications of risks. This will give them better information to make important decisions on new and renewal business, as well as pricing.

What have you learned from this experience?

When implementing a new claims system — especially on a global basis — it is important to understand that there will be costs, a substantial time commitment, and new ways of thinking and doing things. Given the obstacles it is no wonder that insurers hesitate to invest the time and resource into developing more effective, truly global claims systems, especially in the current weak economy and prolonged soft insurance market where all insurers are watching expenses. Ironically though, with insurers' mandates to manage expenses wisely and operate more efficiently, they have been given even more reason to replace legacy systems with newer more effective systems that may enable greater end-to-end claims management.

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