Insurance Buyers' News

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Meet Your Claims Professionals

After a loss, your insurer will probably call in one of several claims experts before it pays your claim. Here's a brief overview of some of the people you might encounter after filing a claim.

Claims adjusters, appraisers, examiners, and investigators evaluate insurance claims. They decide whether an insurance company must pay a claim, and if so, how much.

Duties

Claims adjusters, appraisers, examiners, and investigators typically do the following:

- Investigate, evaluate and settle insurance claims
- Determine whether the insurance policy covers the loss claimed
- Decide the appropriate amount the insurance company should pay
- Ensure that claims are not fraudulent
- Contact claimants' doctors or employers to get additional information on questionable claims
- Confer with legal counsel on claims when needed
- Negotiate settlements
- Authorize payments.

What claims adjusters, appraisers, examiners and investigators do varies by the type of insurance company they work for.

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This Just In

Small businesses have a 40 percent chance of filing an insurance claim during a 10-year period, according to a study by The Hartford.

What types of claims are small businesses most likely to experience?

- **Burglary or theft. Twenty percent of small business claims involved burglary or theft, either by insiders (employees) or outsiders.**
- **Water and freezing damage. Fifteen percent of claims resulted from water damage from frozen pipes or roof damage from snow or ice.**
- **Wind or hail damage. These caused 15 percent of small business claims.**

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They must know a lot about what their company insures. For example, workers in property and casualty insurance must know construction costs to properly evaluate damage from floods or fires. Workers in health insurance must be able to determine which types of treatments are medically necessary and which are questionable.

Adjusters inspect property damage to determine how much the insurance company should pay for the loss. The property they inspect could be a home, a business, or an automobile.

They interview the claimant and witnesses, inspect the property, and do additional research, such as look at police reports. Adjusters may consult with other workers, such as accountants, architects, construction workers, engineers, lawyers and physicians, who can offer a more expert evaluation of a claim.

They gather information—including photographs and statements, either written or recorded audio or video—and put it in a report that claims examiners use to evaluate the claim. When the examiner approves the policyholder's claim, the claims adjuster negotiates with the claimant and settles the claim.

If the claimant contests the outcome of the claim or the settlement, adjusters work with attorneys and expert witnesses to defend the insurer's position.

Some claims adjusters work as self-employed public adjusters. Often, they are hired by claimants who prefer not to rely on the insurance company's adjuster. The goal of adjusters working for insurance companies is to save as much money for the company as possible, while following the terms of the policy. The goal of a public adjuster working for a claimant is to get the highest possible amount paid to the claimant. They are paid a percentage of the settled claim.

Sometimes, self-employed adjusters are hired by insurance companies in place of hiring adjusters as regular employees. In this case, the self-employed adjusters work in the interest of the insurance company.

Appraisers estimate the cost or value of an insured item. Most appraisers who work for insurance companies and independent adjusting firms are auto damage appraisers. They inspect damaged vehicles after an accident and estimate the cost of repairs. This information then goes to the adjuster, who puts the estimated cost of repairs into the settlement.

Claims examiners review claims after they are submitted to ensure that proper guidelines have been followed by claimants and adjusters. They may assist adjusters with complicated claims or when, for example, a natural disaster occurs and the volume of claims increases.

Most claims examiners work for life or health insurance companies. Examiners who work for health insurance companies review health-related claims to see whether the costs are reasonable, given the diagnosis. After they review the claim, they authorize appropriate payment, deny the claim, or refer the claim to an investigator.

Examiners who work for life insurance companies review the causes of death and pay particular attention to accidents, because most life insurance companies pay additional benefits if a death is accidental. Examiners also may review new applications for life insurance policies to make sure the applicants have no serious illnesses that would make them a high risk to insure.

Insurance investigators handle claims in which the company suspects fraudulent or criminal activity such as arson, staged accidents or unnecessary medical treatments. The severity of insurance fraud cases varies, from claimants overstating vehicle damage to complicated fraud rings. Investigators often do surveillance work. For example, in the case of a fraudulent workers' compensation claim, an investigator may covertly watch the claimant to see if he or she does activities that would be ruled out by injuries stated in the claim.

Managing a complex claim can require a lot of coordination and follow-up. We'll discuss more aspects of claims management in our next issue.

Source: Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2014-15 Edition

This Just In

- **Fire damage and customer slips and falls. These types of claims tied for fifth place, with each accounting for 10 percent of all claims.**

Other types of claims included customer injury (not related to slips or falls) and customer property damage, product liability, customer or visitor struck by an object, reputational harm and vehicle accidents. Each of these accounted for fewer than 5 percent of all small business claims.

The chances of your business experiencing any of these claims varies according to your industry, safety practices and other risk factors. We can help you evaluate those factors to minimize your chances of insurance claims and ensure you have the right kind of coverage. Please contact us for more information.

The Insurance Formerly Known as Boiler and Machinery

If you've been in business a while, you might have heard the phrase "boiler and machinery insurance." However, today's policies do much more than cover boilers and machinery, hence the name change. Read on to learn more about this valuable coverage.

Insurers introduced boiler and machinery coverage in the mid-1800s to cover valuable steam-powered machinery from explosion or breakdown. These policies also covered the equipment's owner from liability for property damage or bodily injury resulting from explosion—which unfortunately occurred too often.

Today, few businesses use steam-powered machinery for business operations, but some still use steam-powered equipment for generating heat or power. Many states require these boilers to be inspected annually. If your boilers fall into this category, you may find equipment breakdown coverage a bargain, as coverage includes an inspection by the insurer along with protection from loss due to property damage or bodily injury. If you are relying on a governmental inspection, you may end up paying more and not have the insurance protection.

To prevent business shutdowns or slowdowns, an organization might want to cover other kinds of valuable equipment from mechanical breakdown. Today's equipment breakdown insurance can cover these types of equipment, besides boilers:

1. Equipment designed to operate under internal pressure or vacuum
2. Equipment designed to generate, transmit or use energy
3. Communications equipment and computers
4. Equipment owned by a utility and used to provide service to an insured's location.

Don't think you need this coverage? Consider the following examples of claims from The Travelers, an insurer that writes boiler and machinery insurance and equipment breakdown insurance:

1. 1. A printer's press, which was out of warranty, jammed during a critical time-sensitive print run. The jam caused severe damage, and the printer did not know if repairs would be able to return the unit to full capacity. The insurer's claims department located a suitable used printing press and authorized a full replacement-cost benefit payment. The quick action saved at least $150,000 in potential lost business.
2. An office building's air conditioning unit failed and became totally inoperable during a heat wave. Within two days, the insurer's claims department helped the building's owner find and rent a unit to temporarily replace the lost 230-ton air conditioner and minimize lost income. The policy paid approximately $147,000 for the replacement unit, along with the $20,000 monthly rental and $10,000 delivery and installation cost for the temporary unit.
3. The owner of a shopping plaza received claims payments for the replacement of

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electrical cables after an electrical breakdown damaged the building's air conditioners and threatened the tenants' operations. The policy also paid for rental generators to keep the shopping plaza open, averting additional business income losses.

Insurers typically write equipment breakdown coverage under a stand-alone policy; however, some will include the coverage under highly protected risks (HPR) policies or in business package policies.

Typically, equipment breakdown insurance includes the following coverages:

1. Damage to "covered property" at the location named in the policy
2. Expediting expenses, to cover the costs needed to get insured equipment operational as fast as possible, such as expedited shipping and temporary repairs.
3. Business income and extra expense. Similar to coverage you should have under your property or business owners policy, many equipment breakdown policies will cover income lost due to the slowdown or stoppage caused by breakdown of the insured equipment. Extra expense coverage reimburses you for extra charges you incur to keep your business running while the equipment is not functioning, such as outsourcing or renting equipment. If your policy only lists extra expense coverage, it does not cover lost business income.
4. Utility interruption, which extends the policy's business income coverage to losses or spoilage caused by interruption of any utility service to the insured's premises, rather than just losses or spoilage caused by a breakdown of equipment at the insured premises.
5. Newly acquired premises, or premises unnamed in the policy, for the number of days shown in the policy's declaration page. The coverage only applies if equipment at the new location is of the same type covered by the policy.
6. Errors and omissions, which covers the insured for unintentional errors or omissions in describing or naming the insured property or location, and errors that cause cancellation of a covered premises.
7. Contingent business income and extra expense, which apply business income and extra expense coverage to breakdowns of equipment at a named "contingent location" not owned or operated by the insured.

It can also include coverages to meet special needs, such as spoilage coverage, "brand and label" coverage, hazardous substance cleanup, and more.

Equipment breakdown policies are designed to cover your equipment from mechanical failure only, so they typically exclude damage from earth movement, flood, nuclear hazard, windstorm or hail. They also exclude "causes of loss" typically covered by other property policies, such as aircraft, vehicles, freezing, lightning and vandalism. Many other exclusions apply; however, you can modify many of these by adding an endorsement to your policy.

Equipment breakdown coverage is highly specialized and should be handled by an experienced broker. For information on equipment breakdown coverage, please contact us.

Anatomy of a D&O Policy

Directors and officers liability insurance (D&O) policies are nonstandard, so they can vary greatly from insurer to insurer. In this article, we'll discuss some of the many provisions that could appear in your D&O policy and what they mean to your coverage.

The Typical D&O Policy Contains Two Parts:

Part A covers directors and officers, reimbursing them directly for claims of liability that arise from their corporate duties.

Part B covers the corporation, reimbursing it for expenses it pays on behalf of the directors and officers, if state law permits or corporate charter or bylaws require the corporation to indemnify directors and officers.

Part C appears in some policies. Part C, or "entity coverage," covers the corporation itself when it is named in a lawsuit or claim. Insurers began adding entity coverage to their D&O policies in the 1990s, in response to a spate of securities and employment practices liability lawsuits that named the corporation as a defendant along with the directors and officers.

Entity Coverage or No?

On the plus side, buying entity coverage protects the corporation from potentially expensive claims when it is named as a defendant in a D&O suit. It can also help eliminate disputes

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about allocation. (See following section.) On the negative side, including entity coverage in your D&O policy means a claim against the corporation could exhaust any limits available to cover directors and officers. And if the company files for bankruptcy as the result of a D&O suit, the existence of entity coverage could jeopardize coverage for directors and officers under the policy. A policy with entity coverage could become a corporate asset and be used to pay creditors, rather than protect directors and officers from the claim.

Allocation Provisions

Claims can get complicated when the corporate entity is named as a defendant along with directors and officers. If the D&O policy does not include entity coverage, the insurer must allocate defense and settlement costs among the (covered) directors and officers and the (uncovered) entity to determine how much of these costs the policy will pay.

Allocation provisions determine how the claims payments will be allocated. Some assign specific percentages — such as 70 percent and 30 percent — which means the insurer would pay 70 percent of costs and the corporation 30 percent. Other allocation provisions leave the allocation up to negotiation between the insurer and corporation.

Severability Provisions

The person who signs the application for D&O coverage must warrant that the information included is true to the best of his/her knowledge. If the application contains a "material misrepresentation," traditional insurance law voids coverage. A severability provision provides that material misrepresentation by one person will not void coverage for others. Most policies today only provide partial severability, which generally means that the CEO and CFO, who must sign off on the financial statements many insurers require, would not be covered in the event of a material misrepresentation.

Insured vs. Insured Exclusions

The insured versus insured exclusion prohibits coverage for claims filed by a corporation against its directors and/or officers. Originally intended to eliminate coverage for ordinary business losses due to bad judgment, the traditional insured versus insured exclusion could also eliminate coverage in a bankruptcy situation. You can ask your insurer to modify the exclusion so it does not apply to claims or suits brought by a bankruptcy trustee or similar party.

"Hammer" Provisions

Insurers want to resolve a claim as quickly and inexpensively as possible. This can sometimes mean settling a claim that could have been won in litigation, to avoid high defense costs and potential costs of a loss in court. Some policies include a provision, nicknamed the "hammer provision," that encourages insureds to accept "reasonable" pretrial settlement offers by limiting the insurer's liability for the claim to the amount of the proposed settlement. Policyholders should negotiate to have these provisions removed.

Alternative Dispute Resolution (ADR) Provisions

ADR provisions require the insured to consent to participate in ADR at the insurer's request. ADR can cut defense and litigation costs, but it can also limit your options in a claim situation. When possible, you should negotiate to remove these provisions. D&O insurance is a complex, nonstandard product, with many possible provisions and exclusions. For more information on structuring D&O coverage for your organization's specific needs, please call us.

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Smart Gadgets and Overtime Pay

Can employees expect overtime pay for answering their phones or email outside of work hours?

Labor standards require nonexempt employees to be paid whenever work takes place. If your non-exempt employees are working off-hours answering calls, emails or texts, you could be liable for back pay.

The Fair Labor Standards Act (FLSA) governs which employees are eligible for overtime pay. It exempts professional, executive administrative and outside salespeople, since they usually earn higher incomes. However, since the salary floor hasn't been updated in a long time, anyone making more than $455 a week, or $23,660 a year, now falls into the exempt category. If the Department of Labor updates the figures, as expected, some people earning up to $50,000 could be entitled to overtime pay.

Several recent court cases have involved back pay for off-hours work.

Last year, a group of police officers filed suit against the City of Chicago. The city had given them smartphones and expected them to answer communications while off duty. Although the city's spokesperson said that officers can request compensation for off-hours work, an attorney involved in the case told the *Wall Street Journal*, "They know that if they file for overtime, their job in that elite unit is gone," he said. That case hasn't been settled yet, but it could help determine how employers treat employee use of cell phones and other smart devices off hours.

To prevent liability for overtime pay and penalties, employers need a written policy on after-hours communications for their nonexempt employees.

Employers that provide company cell phones or that give employees remote computer access should be particularly careful. Employment practices liability insurance can help protect your organization from overtime pay lawsuits. It pays legal defense and settlement costs for employment-related claims, which your business owner or commercial general liability policy exclude.

For more information, please contact us.

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THE INSURANCE 411
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