



"CO-OPERATING TO ACHIEVE THE BEST RESULT"

The in-house lawyers in our claims department are specialists in professional indemnity. When dealing with professional negligence claims, they can get the best results for insureds who work together with them. This is true whether defending a claim which has no merit or settling a valid one on the best possible terms. Achieving good results is not simply a matter of negotiating well or putting forward convincing arguments at trial, although these are all important aspects of what our claims department and insureds can work together to achieve. There are other important factors. This newsletter lists some of the ways in which co-operation in the claims process helps to get the right result for insured.

Co-operation on claims

Combining the insured's knowledge and expertise with our own is vital. As our in-house lawyers are familiar with many different claims scenarios, they can quickly identify possible solutions to problems. There can be defences to claims or, equally as important, hidden flaws in what may appear to be obvious defences. Our claims department's resources and skills should however be complemented by an insured's knowledge of the project or matter which gives rise to the professional negligence claim and an understanding of the claimant who is often their client.

Collaborating with our solicitors team from the earliest possible stage can help you in the following ways:

Evidence

We can collect and preserve evidence vital to an insured's position before it is lost. This can mean making sure that witnesses are contacted as soon as possible and that documents are found and retained. We know of cases where key witnesses become uncontactable for a variety of reasons or are just unwilling to help. For example an employee who is about to stop working for an insured may not wish to give evidence after he has left. Obtaining statements from witnesses when their memory of events is fresh is important. Getting hold of relevant files is also essential. We will be able to assess which documents and witnesses to look out for, but an insured's knowledge of the project or matter and of the people involved can greatly assist in finding and exploiting key evidence before it becomes unavailable.

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Remedial Action

We can authorise a whole range of remedial action following a mistake by a professional. Doing so can prevent losses from being incurred or can stop losses which have already taken place from being exacerbated. A common example is repair works where a defect in a design has become apparent during construction. Authorising the right remedial action may depend on the insured, who understands the project or property affected, helping to identify what cost-effective remedial action will have a significant and beneficial consequence on the damages claimed. Our involvement in remedial action can also ensure, depending upon the situation, that the claimant is given help to sort out a problem which has arisen but without the insured's assistance being seen as an admission of liability for that problem.

Experts

We can arrange for experts to become involved and to influence the course of a claim early on. Experts not only have a role in relation to evidence or remedial action but are also able to identify technical arguments early on before the costs of investigating the claim have dramatically escalated. In our experience, the experts that we instruct rely heavily on insureds to provide them with as much relevant information about the claim before they can give their best advice. To give an illustration, experts can inspect alleged defects in a building before all traces are removed by further works. Very often experts are helped by the insured who accompanies them on an inspection and is able to comment on what the expert can see and to provide background information relevant to the project or property.

Client relations

We can assess when it is best for an insured to continue working for a claimant, perhaps in the interest of maintaining good relations for a settlement or possibly to influence a claimant's future conduct. Equally we may have to advise the insured not to take on any more work from a difficult client or even to pull out of a project, or some other engagement altogether to avoid a difficult situation becoming worse. In a similar way we can assess whether an insured should continue corresponding or meeting with a claimant while we remain in the background to follow developments closely and to advise the insured at every step. Sometimes this is the right option but when it is not, we have to become directly involved dealing with claimants or solicitors instructed by them. Our ability to make the right judgment is affected by what the insured can tell us about the claimant or their solicitors. It assists greatly if the insured is able to give us an insight into the claimant's motives or goals.

The examples of collaboration which are given above apply to claims which are likely to fall within the insured's excess as well as claims which will exceed it.

Notifying insurers of claims or circumstances early and responding to requests for documents and information as the claim progresses are basic obligations of insureds. It is probably obvious that insureds who fail to carry out those obligations prejudice the way in which the claim can be handled and, ultimately, are going to create problems for themselves. We hope this newsletter has highlighted how important it is for the insured to contribute to the handling of a claim by co-operating fully. This enhances the prospects of unmeritorious claims being defeated and the meritorious ones being settled in a timely and reasonable way. In the long term insureds benefit further because better results dealing with claims means a better claims record which will be reflected in the cost of professional indemnity insurance in future years.



Please note that this information is not intended to constitute advice or a complete statement of relevant law.

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