

## PI CLAIMS PROCESS



Dear broker and valued client.

Having a possible claim for damages lodged against your FSP can be a daunting prospect – these notes serve to help you through the process.

In terms of your policy wording, you need to report an incident, possible claim or actual claim as soon as you become aware of it. If reported to us, we will submit it on your behalf to the Insurer and they will issue a claim number. We will forward this claim number to you and it should be used as a reference number in all correspondence.

### **“What do I have to do next?”**

You need to provide us with all the information about the possible claim or claim against you. You can do this by:

- Providing the insurer with as much information about the allegation and/or the claim made against you.
- Complete the claim form.
- Forward all documentation relating to the advice given, or work done for the client, in connection with the claim.
- If you have already received a claim from the client please include this. (Letter of demand or letter from an attorney or someone representing the claimant.)
- If you received a “notice of complaint” from the Ombuds office, please include this and also your reply to this complaint.
- Any correspondence between you and the client or other parties that lead to the complaint.

Comprehensive information makes it easier for the underwriter to determine cover and the next steps in the matter.

### **“I have submitted all the detail? What will happen now?”**

Once you have submitted the detail, there could be a few scenarios:

- a) If it is just an incident being noted (and not yet a claim), the insurer will not do anything initially. You will keep the insurer informed about progress, and, should it lead to a claim, the insurer will deal with it.
- b) If it is a complaint that the client directed to the FAIS Ombud, the insurer will wait for the process to run its course. You would need to deal with the Ombud process and reply to the complaint. All correspondence should also be submitted to the insurer to keep them informed. If there is a determination against you by the Ombud, the insurer will deal with the matter from there.
- c) If there is a proper claim instituted, the insurer will consider the facts and documentation submitted by you. In this process the insurer might ask for clarification. This process is initiated in order to determine if you are indeed, in their opinion, liable. If found not liable, they will support you in defending yourself against the claim. If found liable, they will set out to determine whether the policy will pay out and proceed likewise.

### **“What is a proper claim?”**

Due to the close relationship that exists between you and the client or claimant in many cases this can become problematic.

You need to understand that a formal claim against you must be drafted and written by the client or claimant and you cannot do this on their behalf. It happens from time to time that the complainant in a matter is emotional and just want the broker to rectify a situation without them actually knowing what the loss is they suffered or think they suffered. They are in other words accusing the FSP that they did something wrong but they do not clearly set out how much their financial loss was.

A proper claim needs to consist of the following:

1. The details of the person claiming and against who they are claiming.
2. The financial loss that was allegedly suffered.
3. The reason(s) the claimant feels the broker was negligent.
4. This claim must be made in writing and done by the client or claimant. It can happen that it is done by a representative of the client, for example their attorney.

The underwriter will not regard a claim as a proper claim unless you have received the above.

#### **“What happens if I am not covered?”**

There might be instances where you may be found liable towards the client, but your PI policy will not make a pay-out. This will happen if it falls within one of the exclusions on the policy or some requirement was not met, for example, the error was made before the retroactive date on the policy.

You will receive a letter from the insurer informing you about the rejection of the claim and stating the reasons for it. You will also have the opportunity to appeal the decision should you believe that they have overlooked material facts.

#### **“What will the process be to make this decision?”**

Your PI cover is in place for actions or omissions that you are liable for and that caused a financial loss to one or more of your clients.

The underwriter will first have to determine if you were indeed liable, by evaluating all of the facts provided in the documents. The facts are then tested against the policy wording to determine whether the policy will react.

If the policy will respond the next steps will apply:

1. The amount of the claim will be assessed by the underwriter, you might be asked to clarify certain aspects.
2. An agreement of loss will be sent to you. This is the settlement offer less the deductible applicable on the policy.
3. Once accepted by you, signed and returned, payment will be made into your bank account.

#### **“The allegation against me is not true, I did nothing wrong!”**

If this is indeed the case and the underwriter also finds that you were not negligent the action against you will be defended. The following is important to note:

- Under no circumstances should you appoint an attorney to help you without the written consent of the underwriter
- The underwriter will confirm that you may use your own attorney or will appoint an attorney to defend the matter on your behalf.
- Legal defence costs are covered in terms of the policy and the insurer will liaise with you about this.

**“What do I tell my client?”**

We understand that you may get anxious about the claim and that a client may push you for a pay-out. However, as the process to determine whether you are actually liable can take some time, you should inform your client that you have reported the claim to your PI Insurer and that they will respond in due course.

You may not admit liability to your client at any stage. You can keep them informed about the progress by sending them feedback you might receive from time to time.

**“How long will this all take?”**

Unfortunately, it is difficult to give exact timelines as claims will differ from one another. Especially in complex cases the insurer may involve outside attorneys to investigate and give an opinion on the matter. This will stall the process.

The insurer will ensure that he has all the facts before making a decision on the claim. Even in a simple matter, this may take a minimum of one month before settlement will occur.

**Who do I contact if I have any queries?**

As your PI administrator, the team at Snyman and van der Vyver will assist you in this process. They will liaise with the insurer and will ensure that all communication flows through to you.

Please contact the following staff members at any time.

**len@svdv.co.za Tel: 021-9408016**

We hope we have addressed all the general concerns and questions that comes with a claim of this nature.

Receiving a legal action or the notice of a legal action can be very stressful, but rest assured that we are here to assist you through this event.

Kind Regards

The PI TEAM

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Reg. Nr./Reg. No.: 1997/002199/07 | BTW/VAT Nr. 4500164209  
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