

## **Failure to Tender an Insurance Claim?**

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"Penny wise and Pound foolish" is an old adage from England when 240 pence (pennies) equaled a Pound. Loosely it means to be careful about small things while being careless about bigger things. This adage is very true when deciding whether or not to tender claim to your insurance carrier.

An unwise board or manager will ask,

*"Won't tendering this claim cause our premiums to increase in the future?"*

The rational being that the matter seems small and unimportant at first blush so why bother tendering the claim. Like the proverbial iceberg, the real size of the claim sometimes lays well hidden until it is too late to change course. Failure to tender a claim when the Association has first notice of the claim, or even a potential claim, could result in a denial of coverage later on when the full weight of the claim against the Association becomes known. Remember that an insurance policy is a contract between the Association and the insurance carrier. Any breach of the terms of the contract by the Association can relieve the insurance carrier of its obligations to defend and indemnify the Association.

So late tenders, failure to cooperate with the insurance carrier's investigation, failure to make full disclosure to the insurance carrier of prior claims or conditions affecting coverage and other breaches of the terms of the insurance policy often result in a rejection of the claim by the insurance carrier and/or cancellation of the policy, or worse yet; a Declaratory Relief lawsuit filed against the Association asking the Court to declare that the Association has breached the terms of the insurance contract and that the insurance company has no obligation to defend or pay any claims and/or that the policy is null and void.

Upon the first inkling of a potential claim, the Association should immediately consult with legal counsel. There may be potential coverage under one or more of the Association's insurance policies. Counsel can help negotiate the treacherous waters around that iceberg and make sure that a tender is timely made and made to the proper insurance carrier or carriers. And to answer the question about increased premiums; not all tenders rise to the level of a "claim." The insurance carriers look at loss history, among other things, when setting premiums. It is wiser to tender and not have the claim result in a loss payment by the insurance carrier, thus not affecting premiums, than it is to fail to tender, or wait too long to tender, and then be stuck with paying your own defense costs (which are usually the most expensive part of a claim) and any settlement or judgment arising from the claim.