

# Whoops, forgot to mention that!



TruckSure

By Trevor Toohill

Last month I wrote about dodgy and exaggerated insurance claims and received some pretty good feedback – mostly positive and others where I had touched a nerve.

Even a question or two about why I had written about these unmentionable practices.

The thing is this: I write about issues to make sure that you guys have the best possible chance of success in your business dealings over insurance.

We have a saying at TruckSure, "There is only one thing worse than no insurance and that is bad insurance".

You pay a premium to cover an insurable risk. At claim time you want to make sure you get payment, and not a claim decline advice.

But, as I said in the last article there is an even bigger, or should I say more widespread risk.....and that is Non-disclosure – both purposeful and accidental.

Let me throw some technical terminology down and see if I can make it plain and simple

## Your duty of disclosure

Before you enter into an insurance contract with an insurer, you have a duty to disclose to that insurer every matter that you know, or could reasonably be expected to know, that is material to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance (policy).

You are to give the insurer notice in writing as soon as possible of every change materially varying any of the facts or circumstances that existed at the commencement of your insurance.

## Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the policy in respect of a claim, decline a claim, or may cancel the policy altogether.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the policy from its beginning and the matter becomes an issue under criminal law.

Wow! That all sounds pretty stodgey and you can't see how it could affect you, right?

We have had to fight hard to get some claims paid, and have won a few and lost a few – every broker's nightmare!

Here are just a few incidences that have come across our claims desk in the last couple of years:

- Failed to mention pre-existing illnesses when applying for income protection cover – claim declined when joint problems required an operation and time off work.
- Failed to advise a DUI at renewal time – rolled truck and driver's record revealed at claim time – major battle to get this one paid.
- No mention of diabetes on Driver Questionnaire – driver blacked out after not taking medication when due – touch and go claim.

- Driver on drugs! This is a biggie and pretty much auto decline. Claim paid under Invalidation Clause. No driver is going to reveal this and therefore a most serious non-disclosure.

## The main culprits;

- **Traffic offences:** probably the most obvious. Did you mention the "minor" speeding tickets with demerit points meaning a licence suspension a few years back? What about the DUI 5 years ago? Log book not up to scratch? Drug or criminal driving charges? That's just to mention a few.
- **Health issues:** Did you think to mention that you are having trouble sleeping – sleep apnoea? Weight been an issue – perhaps diabetes and medication? Wearing the glasses for driving that were prescribed? Got any pre-existing illnesses or conditions?
- **Accident and claims history:** Have you mentioned all past accidents and claims. This has a big effect on both acceptance of risk and premium rating calculation.

Some of these issues will result in a claim being declined while others will have some bearing on acceptance of the insurance and the premium cost in the first place. Most times your broker will be able to place insurance cover if all is revealed at the outset.

Insurers get pretty septic if they think the wool has been pulled over their eyes.

If you are a small or large fleet operator you may be saved from a declined claim by invoking an Invalidation Clause that any good transport specialist broker will have negotiated in your motor policy. Note – this cover does not apply to a single vehicle owner driver.

## Invalidation cover

A special risk that is insured under some commercial motor policies relates to damage to the vehicle or other parties' property while the driver was under the influence (DIC) or was driving outside his licence restriction (Learners licence or Class for instance) or when disqualified to drive. Or the policy would not respond for other reasons.

In these cases most non-specialised policies will not provide cover.

However, if there is an "Invalidation Clause" written in the policy the vehicle owner will be paid out and any third party damage is paid but the driver causing the accident will be taken to task by the Insurer and will have to pay. It is a given of course that the owner of the vehicle did not know of the breaches and did not partake himself in the action that resulted in "Invalidation".

This is a very important provision when you employ drivers. You may have checked their licence at the start – but what if they lose their licence and don't tell you! Without this invalidation cover you could be in serious financial trouble.

Most of what I have written relates to commercial motor Insurance but just as equally it has a bearing on all classes of cover – Liability, Carriers, Depot, Income and Life.

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