



# **THE CLAIM NOTICE: YOUR GUIDE TO MAKING AN EFFECTIVE CLAIM**

---

**RYAN**  
SPECIALTY

TRANSACTIONAL  
RISK

# RYAN

## SPECIALTY

### TRANSACTIONAL RISK

This article follows the recent release of Ryan Transactional Risk's ("**RTR**") inaugural claims publication, "[EMEA – A Claims Perspective](#)", within which we detailed RTR's claims experience in EMEA across 10 years of trading. Aside from providing illuminating claims severity data, that publication included various practical claims tips designed to assist insureds in pursuing a claim under a warranty and indemnity insurance policy.

Building upon this theme, and noting the limited publicly available information on the topic, we wanted to provide further guidance to the transactional risk community regarding how to issue an effective claim notice. Hopefully this document will not only assist those new to the product, but also serve as a helpful reminder to those seasoned users of transactional risk insurance.

---

*"As a well-known broker recently commented, "a positive claims process nearly always starts with a good claim notice, substantiated with enough information". I could not agree more. We therefore thought it would be helpful to create this guidance note setting out an insurer's perspective of what makes a "good" claim notice.*

*We hope that the insured community finds this document insightful, and we look forward to partnering with insureds for many years to come."*



**Alex White**

Head of Claims, International  
0208 068 2393  
[alex.white@ryantrs.com](mailto:alex.white@ryantrs.com)

## Short On Time?

You can find a quick checklist summarising the key points to bear in mind when issuing a claim notice at the end of this article.



**PAGE  
10**

## What is a claim notice?

In short, a claim notice is the written communication submitted to an insurer in order to make a claim. It is generally sent:

- i. to notify insurers that a breach of warranty has occurred and a loss has crystallised; or
- ii. to simply inform insurers of a circumstance that has arisen which, in the opinion of the insured, could lead to it suffering a subsequent loss.

## When should I notify?

Generally speaking, you should notify insurers as soon as you become aware of any matter that you consider might lead to a claim. For example, it would be prudent to notify insurers as soon as a tax authority conducts a compliance check or audit, even if these are of a general nature.

There is usually no downside to notifying, so insureds are best off notifying insurers on a precautionary basis as early as possible.

### **Should I notify insurers even if the claimed loss falls within the policy retention?**

Yes, it is prudent to notify all claims regardless of whether the claimed loss falls within the policy retention.

In such circumstances, expect insurers to suggest that their coverage assessment is put on hold until the retention is eroded in full. Don't be alarmed, this is a typical approach and is to the benefit of the insured, saving it the time and effort involved in responding to insurers' queries (which will likely arise from their coverage investigations) without the prospect of making a monetary recovery. Nonetheless, remember to retain all relevant documentation in relation to such claims so you can provide this at a later date should the claim ultimately be pursued.



# Why does it matter what a claim notice contains?

**To comply with policy requirements:** it is integral to read your policy wording closely prior to making a claim. Your policy should set out exactly what is required and by when.

**To speed up the claims process:** there is no denying that the quality of a claim notice has a direct impact on the time it takes to resolve a claim. RTR has resolved numerous claims, including the “Incorrect Lease” and “Customer Information Inaccuracies” case studies within our inaugural claims brochure, expeditiously thanks (in part) to the detailed nature of the claim notices received.

60% of RTR claims have been agreed and paid within 12 months, with a significant portion resolved within 3 months.

## Associated case study

### **Quickest claim agreed: 3 days from notification**

RTR recently agreed a claim only 3 days following receipt of the claim notice, with 100% of the claimed amount being indemnified. This left the broker: “delighted to see the claim resolved so quickly”. Not only does this claim illustrate the benefit of submitting a detailed claim notice, it also underlines: (i) the power of collaboration, with the insured swiftly and fully responding to RTR’s limited follow-up questions; and (ii) the value of involving the broker, who was instrumental in the presentation of the claim and aiding its efficient resolution.

## Who should I involve when making a claim?

**Your broker:** first and foremost, involve your broker. Not only can they assist with the formulation of your claim notice, but they can also help throughout the lifecycle of the claim. Please see our recent claims brochure for more detail regarding the many ways your broker can help.

**Other third parties:** some insureds seek the assistance of third-party advisors in drafting their claim notice. This can certainly improve the quality of the claim notice, however it is not essential. Obviously the more complex the claim is, the more beneficial third-party professional assistance will be.

RTR claims have taken half the time to be paid where the broker has been involved so always seek to involve your broker throughout the claims process.



# What should my claim notice include?

## 1. Read your policy

Every policy is different, and it is important that you are compliant with any specific notification requirements.

### Claim notices in uninsured vs insured deals?

In our experience, claim notices under transactional risk insurance policies rarely fail due to procedural deficiencies. Not only are insurance policy notification requirements often simpler and more commercially drafted than those under transaction documents on uninsured transactions, but insurers are also insureds' long-term commercial partners such that they usually behave more collaboratively in the event of a claim as compared with a seller/warrantor. In fact, numerous recent English Court decisions have highlighted the procedural minefield that notifying a seller/warrantor of a claim can present. This comparative ease of notification is yet another benefit of insured claims (pursued against insurers) vis-à-vis uninsured claims.

## 2. Factual background

Our second practical tip to get the most out of a claim, as set out on pages 7 and 8 of [“EMEA – A Claims Perspective”](#), emphasised the importance of addressing the information asymmetry that exists between insurers and insureds. This process of “bridging the information gap” should start at the outset of a claim.

To maximise the effectiveness of your claim notice, it should include a detailed description of the facts that have given rise to the claim. This should include an explanation of when and how the issue arose, when and how it was discovered, and what has happened since. Chronologies can often be a helpful way of ensuring that all relevant details are included.

## 3. Particularise Breach

In our experience, a common shortcoming in claim notices is a lack of particularisation of what has been breached. It sounds obvious, however insureds should clearly set out which insured warranties/covenants/indemnities (the “**Insured Obligations**”) have been breached and, crucially, how and why such Insured Obligations have been breached. This will assist your insurer in reaching its coverage determination as swiftly as possible.

In particularising breach:

- i. Remember to account for key defined terms and set out why they are triggered. For instance, if the Insured Obligation includes reference to “Material Contracts” then you should evidence how the agreement in question falls within that definition.
- ii. Explain and evidence how any seller or warrantor knowledge qualified warranties have been breached, if applicable. In so doing, be sure to factor in how this knowledge concept is defined in the underlying transaction documentation and the policy.
- iii. For complex claims relating to financial statements, breach is sometimes best evidenced by a report from a forensic accountant. Such a report not only greatly assists insurers with their assessment of the claim, but it also improves the insured’s understanding of the matter and the impact that it has had on the acquired business and its valuation.
- iv. Check the extent of coverage for the Insured Obligation(s) within the policy and account for any limitations or extensions (i.e. via policy enhancements) in cover. There may, for instance, be a warranty spreadsheet which amends coverage for the relevant Insured Obligation(s).

## A brief word on policy enhancements:

Positively for insureds, there are often numerous coverage enhancements that can be purchased from insurers. In our experience, these provide immense value to insureds with numerous claims only having been made possible by such enhancements. See, for example, the \$10 million loss in the “VAT Non-Compliance” case study, on page 12 of [“EMEA – A Claims Perspective”](#), which was payable due to the synthetic tax indemnity that was purchased.



## 4. Explain your loss

Set out the quantum of your claim (if known) and how the loss has been caused by the alleged breach. In so doing, be sure to consider your policy *de minimis* and/or retention.

You should also include evidence in support of the claimed loss. For instance, if the loss relates to a third-party charge that has already been paid by the insured then evidence of this loss will be the invoice and proof of payment. If the claimed loss goes to value, it is likely that the insured's valuation model will need to be provided.

It is also prudent to include details of how you have sought to mitigate your loss and, if applicable, what amounts you have already recovered from other sources (or, for instance, tax benefits obtained).

## Is loss calculated on a “pound for pound” basis?

In short, not necessarily. Calculating loss is not always straightforward and it is important to understand how loss should be determined based upon the transaction documentation and the policy. It is often the case that loss is subject to local governing law principles, with it frequently being based upon a type of “diminution in value” (of the acquired shares) concept and not on a “pound for pound” basis. To accommodate for this nuance, and to allow insureds to recover for the latter, insurers often offer an “indemnity basis of loss” enhancement.

## Be realistic...

Within our recent claims brochure, we commented on the importance of insureds being realistic when it comes to their claimed loss. Insurers are in the business of paying claims and are simply seeking to establish the objective position on loss. Therefore, claiming for speculative limbs of loss only serves to jeopardise the expeditious and cost-efficient resolution of a claim without tangible upside to the insured.

## 5. Consider exclusions and other limitations

Remember to check the transaction documentation and the policy to see if there are any exclusions or other limitations that are applicable to your claim and factor these into your claim as early as possible.

For instance:

- i. Is the matter Disclosed (check how this is defined in the policy) in the due diligence, disclosure letter/bring-down disclosures and/or the data room (as applicable)?
- ii. Does a specific policy exclusion apply?
- iii. Is a policy or transaction document limitation applicable (for example, regarding changes in law)? Please note that the policy may disapply, but also synthetically include, certain limitations.

Exclusions or limitations may be irrefutably applicable which, if spotted early, will prevent the insured wasting time and effort in pursuing a claim. Alternatively, there may be exclusions or limitations whose application is less clear cut. In such circumstances, it can be helpful if the insured sets out why such exclusions or limitations do not apply to its claim, so that an insurer can factor the insured's analysis into its coverage assessment. Clearly, it is in the interests of all parties to open a dialogue on potentially material coverage issues as early as possible.

### How do exclusions interact with Insured Obligations?

A key point to keep in mind, that was recently confirmed by the Court of Appeal (England and Wales), is that exclusions will generally take precedence over Insured Obligations. Accordingly, ensure that you review the entirety of your policy and critically evaluate whether any exclusions exclude your claim notwithstanding that an Insured Obligation is seemingly covered under the cover spreadsheet (if applicable).



## 6. Support with evidence

Transactional risk insurance claims are evidence based. You should therefore enclose supporting evidence of breach and loss alongside your claim notice. Further, if you are referring to documentation (for example, correspondence with third parties) within your claim notice then this should also be provided.



## What happens next?

This will completely depend upon the nature of the claim notice. For example, insurers will often acknowledge receipt of precautionary notifications and ask for material updates to be provided in due course, whereas insurers may wish to immediately participate in claims where a third-party demand is involved (alternatively they could simply ask the insured to act as a prudent uninsured in such circumstances). On complex claims, experienced claims partners such as RTR will likely suggest a kick-off call to collaboratively commence the claims process and help manage expectations of the various parties concerned.

Of course, if there are any specific actions that you desire from your insurer on receipt of your claim notice (for example, approval to appoint legal counsel in respect of the defence of a third-party claim), then you should clearly set these out in your claim notice. You should also specify any key deadlines that need to be adhered to.

If you would like to discuss any element of this document further, please do not hesitate to get in touch with **Alex White, Ryan Transactional Risk's Head of Claims (International)** at [alex.white@ryantrs.com](mailto:alex.white@ryantrs.com), or another member of the Ryan Transactional Risk team.

Ryan Transactional Risk is a leading managing general underwriter specializing in transactional insurance solutions for the mergers and acquisitions market. Our products are underwritten by a panel of top underwriters at Lloyd's of London and other reputable insurers. As part of the Ryan Specialty family, we are dedicated to providing specialized products and solutions for insurance brokers, agents, and carriers. Ryan Specialty boasts a workforce of 4,000+ employees across three continents and is listed on the New York Stock Exchange.

## Ryan Transactional Risk Offices

### London

13th Floor,  
30 St. Mary Axe,  
London, EC3A 8BF  
+44 (0)203 912 6692

### New York

1185 Avenue of the Americas  
Suite 2310  
New York, NY 10036

### Barcelona

Paseo de Gracia 98,  
4th Floor – 2a  
08007 Barcelona  
+34 910 603 945

### Madrid

Velázquez 34, 6,  
28001 Madrid  
+34 609 706 969

### Singapore

7 Straits View,  
Marina One East Tower, #05-01,  
Singapore 018936  
+65 8207 5485

## RYANTRS.COM

Please note that the application of any information within this document, and the extent of coverage for any particular claim, always depends on the applicable law, facts, circumstances and relevant policy language. Nothing within this document shall constitute advice and should not be relied upon as such. This document is not a complete summary of all of Ryan Transactional Risk's claims data, nor is it a complete summary of Ryan Transactional Risk's claims handling practices. Ryan Transactional Risk shall have no obligation to update this document and shall have no obligation to any person in connection with this publication or any matter contained herein.

Ryan Transactional Risk's operations are conducted through several legal entities, the choice of which depends on where the entities are authorised to operate. In the UK, Ryan Transactional Risk is a tradename of Ryan Specialty International Limited ("Ryan Specialty UK"), authorised and regulated by the Financial Conduct Authority (FRN 733324). Registered office: 30 St. Mary Axe, 13th Floor, London, EC3A 8BF, United Kingdom. Company number 07164987. In the EEA, Ryan Transactional Risk is a tradename of Ryan Specialty Nordics AB, Spanish Branch, authorised by the Spanish Financial Services Authority. Org nr 556741-6572. Registered office: Avenida del Doctor Arce 14, 28002, Madrid, Spain ("Ryan Specialty Spain"). CIF W002509. In the US, Ryan Transactional Risk are conducted by Ryan Transactional Risk (f/k/a Concord Specialty Risk), a series of RSG Underwriting Managers, LLC, a Delaware limited liability company ("Ryan Specialty US"). Ryan Specialty UK, Ryan Specialty Spain and Ryan Specialty US are subsidiaries of Ryan Specialty, LLC. Ryan Transactional Risk works directly with brokers, agents and insurance carriers, and as such does not solicit insurance from the public. Some products may only be available in certain jurisdictions, and some products may only be available in the US from surplus lines insurers. In California: RSG Insurance Services, LLC (License #0E50879).

©2024 Ryan Specialty, LLC

## Checklist For An Effective Claim Notice

- ☐ Involve your broker
- ☐ Check policy requirements
- ☐ Notify insurers as early as possible
- ☐ Provide a detailed description of the facts, including explaining:
  - ☐ When and how the issue arose and was discovered
  - ☐ What has happened since
- ☐ State what warranties/covenants/indemnities have been breached and how, including:
  - ☐ Factoring in defined terms (if applicable)
  - ☐ Evidencing seller/warrantor knowledge (if applicable)
  - ☐ Checking for restrictions or extensions in cover under the policy
- ☐ Provide details of loss (if known), including:
  - ☐ How it has been caused by the breach
  - ☐ The basis for its calculation
  - ☐ Evidence
  - ☐ Mitigation steps taken or recovered amounts received (if applicable)
  - ☐ Consideration of the policy de minimis and retention (if applicable)
- ☐ Consider limitations (policy and transaction documentation) and policy exclusions
- ☐ Enclose documents referred to in the claim notice (if applicable)
- ☐ State whether there are any specific requests from insurers
- ☐ If there is a tower, send the claim notice to all excess insurers (your broker can help with this)
- ☐ Retain all documentation relating to the claim throughout the claims process

---

**RYANTRS.COM**

---