



Objective Warranties Should Reduce Coverage Disputes

Warranties come in a variety of forms. They can be a question on an insurance application, a stand-alone Warranty Letter, or what's known as an "Inverted Warranty," where warranty language is built into an insurance policy form.

The wording of Warranty Statements can vary. In general, Warranty Statements either have the person making the warranty affirm that they do not know of anything that "might give rise to a Claim," or that they know of nothing that is "reasonably expected to give rise to a Claim."

It's important to note that sometimes the word "claim" is capitalized while other times it is not. When capitalized, it can be presumed that "Claim" is being used in accordance with the definition ascribed to it in a particular insurance policy.

Further, warranties may contain a "polling requirement" which calls for the signer of an application or Warranty Letter to ask fellow or prospective insureds about any potential Claims before signing the warranty. Language used in this type of Warranty Statement might include, "...the Proposed Insured represents, after reasonable inquiry, that no person or entity proposed for this insurance is aware of any fact, circumstance or situation which could reasonably be expected to give rise to a Claim to which the proposed insurance would apply..."

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Subjective Warranty Statements

Warranty Statements may be considered completely subjective – they have limited value to a carrier and can be considered as designed to provoke disputes. It is rare that a carrier is found as definitively justified in denying a Claim solely based on what the carrier asserted to be a false Warranty Statement based on subjective knowledge.

Subjective Warranty Statements, when successfully invoked by an insurance carrier to deny coverage for a Claim, are usually just one aspect of a denial that relies upon multiple grounds to justify withholding coverage. And, if there is a possible benefit to a subjective Warranty Statement, it is psychological. If an applicant refuses to sign one, it can be a red flag to expect a Claim.

Finding a Solution

Subjective Warranty Statements can be seen as an attempt to ask a non-insurance professional to subjectively analyze a situation and assess whether it will turn into a covered Claim in the future – something that would be hard for a claims professional, let alone an executive of a company.

This difficulty is compounded when the warranty only applies to a certain excess layer of coverage. For example, if an applicant is asked to provide a Warranty Statement with regard to only the newly purchased \$10 million layer of coverage in excess of \$30 million, they must now assess not only if a known situation will evolve into a Claim, but also if that Claim will entail covered Loss that will exceed \$30 million.

So, what can be done to remedy the situation?

We believe that by removing the subjective aspect of Warranty Statements, the vast majority of warranty disputes can be avoided. This approach is better for policyholders, insurance carriers and insurance brokers.

Under this new paradigm, applicants are asked to simply provide notice of specific, objective events with no component of a subjective assessment. The applicant doesn't have to assess anything, they simply report what they know to the insurance carrier. This enables the insurance carrier to underwrite the situation, armed with the knowledge of what the cause of a potential Claim might be.

Creating an Objective Warranty Statement

At Amwins, we help you win. To that end, we are working with some of our insurance carrier partners to revise Warranty Statements with the basic goal of certainty rather than speculation. This new, innovative Objective Warranty Statement will ask applicants if they are aware of any current investigations, or written threats of an investigation, against any proposed insureds (to include the company and individuals). It will also ask if anyone has made a written demand for money, services or any other type of relief against any prospective insureds. We believe this will help reduce, or even eliminate, warranty-based insurance coverage disputes, benefitting every participant in the insurance industry.

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