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Professional Concepts Insurance Agency

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Did You Know?

For many clients, PCIA not only handles all of their property and casualty coverages, but also their employee benefits. We have a unique program that may fit your firm. Please call us at 810-969-4041 ext. 5260.

The material contained in this newsletter is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

WHEN TO SUBMIT A PROFESSIONAL LIABILITY CLAIM

During the course of a firm's practice, inevitably attorneys are faced with the task of deciding whether and when to submit a claim for legal malpractice to their professional liability carrier. This can range from either an actual to a potential claim. The firm's decision can have a major impact on its insurance coverage.

Claims-made policies dictate that it is not the time of the occurrence that triggers coverage but is instead the date upon which such claim is brought against the firm. Many claims-made policies require that notice of the claim be provided by the firm within a certain policy period. Some claims-made policies may also provide for an extended reporting period extending coverage beyond the expiration of the policy, providing that during the course of the policy period the attorney provided notice to the carrier of the potential claim. Previously, most claims-made policies did not provide a definition for the term "claim." This often led to coverage disputes. Most claims-made policies now provide coverage not only for errors committed during the policy period, but for those errors occurring prior to the inception of the coverage. A condition precedent to such "prior acts" coverage is that the insured did not know and could not have reasonably foreseen that the error would give rise to a claim.

Identifying acts that may give rise to a malpractice claim is critical in mitigating potential malpractice exposure. Any act or omission by a lawyer could become the basis of a claim. It is not uncommon for a malpractice action to arise under circumstances wherein the attorney's conduct was exemplary. Reasonableness is the test. In the instance of a blown statute, the error is clear. Often however, the act or omission that may give rise to a claim is more subtle. Many

attorneys are reluctant to report a claim to an insurance carrier because of concerns as to the effect such notice might have on the carrier's assessment of the insured's future risk level when determining future premiums. By failing to report promptly, however, attorneys may deprive themselves of coverage and of a valuable ally in efforts to avert or minimize a claim. Some carriers maintain a consultation hotline for insureds that have questions about a given incident or need help in resolving a problem. If the attorney is unsure as to whether a particular incident is likely to give rise to a claim, the insurer may be able to provide helpful advice. More importantly, the insurance carrier may be able to assist in averting a claim and/or mitigating damages. For example, in cases where a default has been entered against the attorney's client after the attorney has inadvertently allowed an important filing deadline to lapse, the insurance carrier, if notified, may be able to assist the attorney is setting aside the default. Most carriers actively encourage their insureds to report borderline incidents that may give rise to a future claim for malpractice. To encourage early reporting of potential claims, some carriers specifically provide that reporting a potential claim will not affect the insured's future risk assessment.

Once an attorney has decided to submit a claim or potential claim to his insurer, he or she should become familiar with the reporting



PCIA provides a portfolio of coverages to protect your assets:

- Aviation/Drone
- Bonds
- Business Auto
- Builders Risk
- Cyber/Network Security
- Directors & Officers
- Fiduciary
- Employee Benefits
- Employment Practices
- General Liability
- International Risks
- Professional Liability
- Property
- Railroad Protective
- Umbrella
- Workers Compensation
- Workplace Violence

provisions of the applicable professional liability policy. Most claims made professional liability policies provide that, upon receipt of a claim, the insured is to provide written notice to the carrier as soon as practicable. The apparent ambiguity of the phrase has resulted in considerable litigation as to its meaning. Judicial interpretation of the phrase has often been as ambiguous as the phrase itself. For example, many courts have held that the requirement means notice which is prompt and reasonable under the circumstances.

Except for the claims-made and reported policy, the courts have generally been lenient toward the insured, and have sometimes deemed periods of years between the time the claim is made and notice is given to the insurer as reasonable. Indeed, a slight majority requires that the insurer seeking to avoid coverage show that it suffered actual prejudice as a result of an insured's delay in notification. However, the insured would be ill-advised to delay notification to the insurer on the basis of such decisions. Many claims-made policies require that the insured give notice of a claim to the company within a stipulated period of time. Even in the absence of such restrictions, it is advisable to give the insurer notice of a claim as soon as it has been made. The same practice is advisable with regard to potential claims. Prompt reporting practices on the part of the insured will help avoid potential disputes with the carrier in this regard. Additionally, giving the insurer prompt notice of a claim may aid in mitigating the insured's exposure by giving an insurer ample time to prepare the insured's defense. When reporting a claim or incident which may give rise to a claim, give the insurer as much information as possible regarding both the incident and the coverages. Keep a central file of your professional liability policies readily available. This file should not only contain complete copies of your policies, but also current information regarding the identity and contact information of your current contact person. Review and update this file

regularly. In the event of a claim, obtain and completely fill out the information requested on the insurer's claim form. Copies of such forms are readily available from your carrier or broker. If a written claim has been made, attach a copy of every written demand, notice, summons, or other process received by the firm.

Provide an explanation of the circumstances surrounding the claim. In this regard, avoid simply referring to the attached pleadings or demands. Explain in your own words the nature of the case or services which you were providing to the claimant. Explain the specific act, error or omission which is the subject of the claim or potential claim. Describe the injury or damage which has or may result and describe the circumstances whereby you first became aware of the claim or potential for a claim. If you had previously notified the insurer of the claim or potential claim, copies of the earlier correspondence should be attached. Provide relevant information regarding the policy including the current name and address of the named insured, the policy number, effective dates of the policy and the applicable policy limits. Identify the person within your firm who should be contacted in the event the insurer has any questions regarding the claim. Send the claim via registered or certified mail. Follow up with the insurer if it does not promptly acknowledge receipt of the claim.

Following these guidelines will strengthen your firm's relationship with the carrier and provide a unified front against the claimant. It aids in avoiding coverage disputes and increases the likelihood of a continued relationship between insurer and insured. Long-standing relationships are desirable in that a carrier will look more favorably on a long-standing, historically cooperative firm during its annual risk assessment.

