



Reporting Potential Professional Liability Claims to your Insurance Carrier

Our clients often ask us if they should report a situation to their professional liability insurance company. The question arises because an event has occurred that causes our client to believe a claim could develop from the situation- often long before it has been alleged they have any responsibility for the issue.

The timing in which potential claims, or circumstances, are reported is important. As an insured, you have an obligation to report to your insurance carrier, during the policy period in which you first become aware of them, any circumstances that might reasonably give rise to a claim. Furthermore, upon your annual insurance renewal, the new insurance policy will exclude coverage for any known circumstances that would reasonably give rise to a claim.

Professional liability insurance policies are “claims made” policies. As such they are designed to allow Insureds to report circumstances to their insurance company and thereby preserve their right to coverage for any claim that may result from them. This is true even if an actual claim is not made until years later.

Despite the fact that professional liability policies allow for reporting of potential claims circumstances, many clients are reluctant to report them to their insurance company because they believe it will adversely impact their insurance premium at renewal. This is largely a misconception- there is little or no risk in reporting a potential claim to your insurance carrier because they understand the difference between a claim and a circumstance and intentionally disregard reported circumstances in their underwriting of premiums. On the other hand, there is *significant* risk in choosing not to do so.

Informing your agent of a claim or potential claim does not meet the reporting conditions in your insurance policy- they need to be reported directly to the insurance company.

Some firms report a claim to their insurance companies and ultimately have their claim denied. This is often because there is evidence that, before the current policy period, the firm had knowledge of the situation that led to the claim. For example, such evidence could be a chain of emails discussing the situation that led to the claim.

It Pays to Report Circumstances

We have numerous clients that annually report circumstances to their insurance company. Some of these develop into future claims, many do not. These clients receive a stable and competitive premium from their carriers despite the reported circumstances. In fact, these clients are even considered by their insurers to be their “best accounts”. This is because insurance companies prefer to have insureds that are proactive in partnering with them in order to minimize the cost of claims for all parties involved.

Insurance companies want their Insureds to report circumstances because they believe they can best mitigate potential future losses by providing pre-claims assistance. They know that an ounce of prevention is worth a pound of cure. They also know if they increase premiums based on reported circumstances, they will discourage reporting and thereby increase their own future losses.

When is the right time to report a potential claim?

The best time to report a potential claim is when you first become aware of a circumstance that might reasonably give rise to a claim. To put it another way, if you think to call your insurance agent to ask if a situation should be reported, then the time is right to report this circumstance directly to the insurance carrier. Informing your insurance agent of a claim or potential claim does not meet the reporting conditions in your insurance policy; Claims and circumstances need to be reported directly to the insurance company.

Another answer to the question of when to report a potential claim is promptly after becoming aware of property damage, injury, or economic loss on a project you are working on or have worked on. Attorneys will often name *all* the design and construction firms that worked on the project, even those that did not perform the work that caused the problem, because they know firms will likely pay nominal settlements to be released from a claim rather than incur the cost of proving it was not their work that caused the loss. Finally, know that a firm is seldom penalized, but instead rewarded, for doing what is prudent to preserve coverage for a situation that may or may not develop into a future claim.

Case Study

In 2012 an architectural firm in the Southeast was made aware of a problem with the exterior panels on a school that they had designed. The architectural firm did not believe they were responsible for the issue and did not report the situation their insurance company when they were made aware of it.

The architectural firm estimated the damages to be \$75,000. They had a \$50,000 deductible and chose to handle the situation without the insurance company's involvement feeling confident that they would not be sued. The situation evolved over the course of a year before the architect was sued, and the damages ballooned to \$175,000.

It was at this time that the architectural firm reported a claim to their insurance carrier. The insurance carrier declined to cover the claim for two reasons:

1. The potential claim was not reported during the insurance policy period that the architectural firm was first made aware of the problem.
2. The architectural firm tried to resolve the claim without the insurance company's involvement.

The financial hardship and internal stress from this uncovered claim was too much for the firm to absorb. Ultimately, they made the difficult decision to dissolve their firm and then split into three smaller companies, two of which are still in existence.

In Summary

In summary, insurance companies can, and do, deny claims if there is evidence of knowledge of a circumstance that might reasonably give rise to a claim prior to the current policy period. Therefore, it is best to exercise caution and report each and every situation that might reasonably lead to a claim in order to preserve your insurance coverage.

Policy Wording from Prominent Insurance Carriers

The following examples underscore the importance of reporting circumstances that might reasonably give rise to a claim and set precedent for the insurance company to deny a claim if there is evidence of knowledge of the circumstance prior to the policy period. Please be advised that these are just examples; refer to your Insurance policy for exact wording.

- This insurance applies to a Claim for a Wrongful Act to which this insurance applies, only if none of the Insured's directors, officers, principals, partners or insurance managers knew or could have reasonably expected that such Wrongful Act might give rise to a Claim.
- This Policy shall not apply to damages or Claims Expenses resulting from any Claim... arising out of any facts or circumstances known to the Named Assured, or officer, director, principal, partner or insurance manager of the Named Assured, prior to commencement of this Policy which a reasonably prudent person... might expect to give rise to a Claim against the Assured.



Both of these examples exclude situations that you might “reasonably” expect to result in an actual claim. This is the danger with choosing not to report a circumstance; the insurance company makes the determination as to whether or not a firm could have reasonably expected a claim to result from a situation. For this reason, it is best to err on the side of caution and report every situation that could possibly lead to a claim in order to lock in potential insurance coverage.

