



## RISK MANAGEMENT INSIGHTS

by W. Brian Ahern, RPLU

### The Importance of Disclosure on an Insurance Application

One of the most important documents a law firm submits in their quest for insurance is their application for professional liability insurance. The application includes multiple questions about the firm that helps the underwriters assess risk and decide whether and on what terms to provide insurance or disclaim coverage of certain events. Failure to accurately answer questions and/or fully disclose pertinent information can lead to the denial of a claim or complete cancellation of a policy, leaving a law firm without insurance coverage when they need it most.

Lawyers may choose not to disclose certain events for fear of increased premiums or denial of a policy. However, that typically is not the end result. Professional liability insurance policies are claims-made policies, meaning that coverage is provided for all claims made during a specific period, regardless of when the incident that leads to the claim actually occurred. Instead of denying coverage altogether, the insurance carrier would most likely deny coverage only for the specific event(s) disclosed on the application or where the firm or its attorneys had a reasonable basis to believe a professional duty had been breached or that a claim might be made.

According to San Diego attorney Charles Grebing with Wingert, Grebing, Brubaker & Goodwin, most professional liability carriers “try to do the best they can for their insureds.” He notes that most insurance carriers only take the position that a claim is not covered when the behavior of the lawyer or law firm is egregious. “Carriers are generally good about covering their attorneys when the circumstances don’t warrant the malpractice claim.”

It should be noted, however, that carriers may take a more unfavorable approach with respect to a claim or potential claim if they have left the market and are no longer writing the coverage, or if the firm has changed carriers and the firm should have reported a matter under a prior carrier’s policy.

Therefore, the best rule of thumb is to disclose everything when completing an application, including all disciplinary proceedings, complaints or even preliminary inquiries about professional conduct. History has shown that the lawyers and law firms that err on the side of nondisclosure can ultimately end up in court battling with their carrier over coverage

To ensure that your application for professional liability insurance fully discloses all pending and potential claims, a comprehensive query of all the lawyers to be covered under the policy is advised. If you aren’t sure if an event warrants disclosure, Grebing suggests including it on the application and noting that you expect the best case scenario result but that you felt compelled to disclose nonetheless. Also make sure you provide formal notice per the claim reporting requirements under the policy (referencing only in the application is not considered proper reporting). Another option, if you are in doubt about whether to disclose, is to query your insurance agent or broker and ask him or her to document their file with your inquiry, even if they tell you no disclosure is needed.

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