

## TAKING THE RISK OUT OF INSURANCE or WHEN SHOULD I REPORT A CLAIM?

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### RISK:

1. Possibility of loss or injury;
2. Someone or something that creates or suggests a hazard; or
3. The chance of loss or the perils to the subject matter of an insurance contract.

---Merriam-Webster Online



If only there was a recognizable warning sign that sends a message that a CLAIM is coming!!! Our keen sense of danger would spark our natural reaction to **DO SOMETHING** to proceed safely and avoid the oncoming risk. Since there is no international warning sign for a **CLAIM**, we need to create another tool that alerts us and sparks the decision to report a claim.

It may be the very essence of being a professional that increases our risk when we decide not to report an incident or a potential claim. After all, the client who calls or writes with a concern or a complaint rarely sets forth in clear terms what their next course of action will be, and may not argue further when we explain or justify our professional actions with logical and concise rationale. We are confident that our professional explanation has explained the circumstances which gave rise to the client's dissatisfaction, or has reminded the client of certain disclosures or conditions that were explained at the time of the service. We conclude that the matter is resolved satisfactorily and there is no need to report this "incident" to our errors and omissions insurance carrier.

Most professional liability policies contain a "prior knowledge" provision. The policy will advise that it applies to certain acts, **PROVIDED THAT:**

**...Prior to the Policy effective date the INSURED had no knowledge of any act, error, or omission which could be reasonably expected to result in a claim.**

When a claim is reported to an insurance carrier, an investigation is conducted to confirm basic facts that are incidental to coverage under the policy. Part of this standard investigation is to determine when the insured was first contacted by the client. If there had been contact by the client **PRIOR** to the effective date of the policy, the carrier will want to determine what that contact was, and whether or not the content or substance of the client's concern or complaint was sufficient to constitute "prior knowledge".

So what will constitute "prior knowledge"? Unfortunately, it is difficult to set forth a clear and concise list that we can consult when weighing the necessity to report an "incident" or potential claim. However, here are some general guidelines.

Report any incident or complaint that falls within one or more of the following descriptions:

1. It came from the client through their attorney. Attorney representation can mean that the client is serious enough about their concerns that they will pursue the matter further if they are not completely satisfied with the reply. 

2. It is specific in identifying "injuries" or losses the client believes they have experienced.
3. It requests money or a specific service as a redress for the injury or loss,
4. It states that the client is going to contact a regulatory agency.
5. It threatens legal action or otherwise states an intention to pursue the claim.

## IF THE CLIENT SAYS

### ***"You Promised"***

You told me that my investment would net no less than 6% growth each year. Instead, I have only earned \$400 this year on my \$50,000 investment. I was expecting receipt of the minimum return you guaranteed and I need the money.

### ***"You Didn't Say"***

When you told me to transfer my mutual fund to a variable annuity, you didn't tell me that I would be paying a fee for the transfer. And, you didn't tell me that the new product was subject to taxes each year. I am going to lose over \$2,000 in the first year. Please tell me how this can be fixed.

### ***"I Was Better Off Before"***

I had two life insurance policies with premiums of \$1,500 annually. The premiums were guaranteed and so was the death benefit. You convinced me to cash in those policies and buy one policy. Now my premiums are increasing and the death benefit is decreasing. The policies I had before were better and I want them reinstated.

## REPORT IT AS A POTENTIAL CLAIM

**(Even if the client contact was with a superior, management, the compliance department or with the insurance company)**

Reporting "incidents" or potential claims when they first occur removes the "RISK" of having a claim denied based on prior knowledge. That is because most policies contain a provision that provides coverage for "incidents" or potential claims that BECOME actual claims, even if the policy period has expired. Therefore, the RISK is removed that this "incident" or potential claim may not be covered. And, since the matter reported is a "potential" claim, the complaining client is generally not contacted by the E&O carrier.

### **NEW CARRIER?**

#### **IMPORTANT TIME TO REVIEW CLIENT CONTACTS**

If your errors and omissions coverage is going to be provided by a new insurance company, the new carrier will normally ask that a warranty statement be signed and included with the application for their insurance. That statement will include an attestation that the applicant is not aware of any act, error or omission that

could reasonably result in a claim. The new carrier is expecting that anything that meets the "prior knowledge" test will have been submitted to the prior carrier. In most cases, the new policy will not cover such claims, even if the ACTUAL claim is made during the new carrier's policy period.

Review your files and consider if you have had any contacts, whether they were verbal or in writing, that MAY be deemed to constitute "prior knowledge" and report those matters to the current carrier PRIOR to the policy expiration date.

Coverage for professional liability claims is our paramount concern when we purchase errors and omissions insurance. Therefore, protection under the policy is afforded and personal (out-of-pocket) liability is averted when the WARNING SIGN is detected and the "incident" or potential claim is reported.



Remember, the client contact you receive will not have a cover page with this warning sign. It will not scream out at you that THIS IS THE ONE that is going to become a claim. Consider if the complaint or concern may become an actual claim, and **REPORT IT.....**

**TAKE THE RISK OUT OF INSURANCE!!**



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