



E&O Liability Insurance

Important Facts and Claims Information

Professional service providers of all types purchase errors and omissions (E&O) Liability insurance (aka malpractice or miscellaneous professional liability (MPL) coverage). These policies provide liability coverage against claims brought by third parties alleging acts, errors or omissions in the rendering of — or failure to render — professional services.

PROFESSIONAL SERVICES

In order for the policy to be responsive in the unfortunate event of a claim, the rule of thumb is to (1) fully vet the professional services provided by the client, (2) properly define the services, (3) confirm that the insurance carrier accepts the services as provided, and finally (4) obtain a commitment from the carrier to recognizing those professional services on the E&O Liability insurance policy. It is imperative for both the client and the insurance carrier to agree on the professional services. Your insurance broker will be helpful in this regard.

NOTICE IS KEY

In general, E&O policies have very restrictive reporting requirements. Usually, E&O policies contain what is called a “claims-made-and-reported” notice requirement, which provides that a claim must be made within the policy period and noticed to the carrier by a date certain (e.g. 30 days after the claim is made, by the end of the policy period, 30 days post-policy period, etc.). Under such language, if a claim is not reported on a timely basis, a carrier may deny on the grounds of late notice. Further frustrating matters, depending on the applicable jurisdiction, the carrier may not be obligated to take into account extenuating circumstances or other arguments from an insured as to why the notice provision was violated. Under claims-made-and-reported policies, many courts state that “no prejudice” is required for the carrier to

deny coverage based on late notice. This means that when the carrier denies coverage based on late notice, the carrier is not obligated to show that the late notice disadvantaged the carrier’s coverage position or settlement prospects. In addition to requiring an Insured to report a claim made during the policy period and within a certain period of time, some policies also require that a claim must also be reported “as soon as practicable.” Some courts have upheld insurance carrier coverage denials for claims that meet the reporting requirement, but were not reported “as soon as practicable.” An example is a claim that is made and reported within the policy period, but was reported six months after the claim commenced. Because the six month delay is not in accordance with the “as soon as practicable” reporting requirement, courts have upheld denials on this basis as well.

Further, even if the Insured has not received notice of a claim, many E&O policies require that a notice of circumstances that may reasonably be expected to give rise to a “claim” must be given within a particular time frame. Consequently, it is of utmost importance that Insureds report to a carrier any matters that could arise to a claim.

CLAIMS MANAGEMENT ADVOCACY

Pursuant to the above, claims management advocates have an important role to play in the E&O Liability claims process. These are just



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some of the ways that we can minimize problems and increase the likelihood of a smooth claims resolution:

- Providing timely notice to the insurance carriers;
- Explaining and interpreting the litigation and claims insurance processes to insured company executives, board members and other concerned parties;
- Consulting on counsel selection and helping to obtain consent to selected defense counsel, or consulting with respect to panel counsel;
- Helping to interpret, and where appropriate, helping to formulate a response to the carrier's reservation of rights letter and other communications;

- Helping to facilitate communications with the carrier's claims representative or monitoring counsel;
- Helping to develop consensus on the desired defense strategy, including helping to obtain consent to settlement;
- Helping to facilitate resolution of, or ameliorate, disputes that may arise.

Once again, our claims management advocacy practice has experienced claims representatives that can help smooth the claims process and avoid problems. Our seasoned claims representatives will be familiar with all of the participants' expectations and will be familiar with the problems that typically arise.

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