

Settling Your Own Claims is Not a Good Idea

By Bob Bixby

First of all, what is a claim? Professional Liability Insurers generally define claims as being a demand against the insured for money or services alleging that the insured has been negligent. Some insurers go a step further and include potential claims in their definition of a claim. A potential claim could be defined as a situation for which a reasonable person might expect a claim to arise. Policies differ and you should check your own for definitions of these and other provisions mentioned in this article.

Some people think that, even though they are in violation of the policy conditions, on a small claim they don't have much to lose. The kicker here is that small claims can develop into large claims, and you don't want to be a self insurer on a \$1,000,000 claim.

Even though a situation may not fit the definition of a claim, it's usually a good idea to report it to the insurer anyway. Insurers that specialize

in professional liability insurance for design professionals use experienced and knowledgeable claims representatives, and lawyers who themselves specialize in defending design professionals. In many cases, because of their specialized training and experience, they can help mitigate the claim or nip it in the bud before it amounts to anything.

In the conditions section of the policy, your duties, in the event of a claim, are clearly spelled out. One duty is to report the claim to the insurer without delay. One policy says "promptly", another says "as soon as practicable". Bringing the insurer in early increases the probability of a successful defense. Late notification may jeopardize the insurer's ability to fully investigate the loss, which is a distinct advantage to the plaintiff.

The policy conditions also state that you should not admit liability or make any payment without the insurer's consent. Doing so could void your policy. This clause exists because, in situations where it may seem obvious that you made an error, upon investigation, that error may not have caused the actual damages. Also, the alleged damages may be considered *betterment* which you should not be responsible for.

The insurance policy is a contract between you and the insurer and, if you don't abide by the conditions of the policy, you are in breach of the contract and the insurer can refuse to cover the claim.

Take the case where a design professional called his agent to tell him that he had negotiated his own claim and lowered his fees to pay the damages that the plaintiff had asserted. He called to tell his agent the dollar amount of damages so that the insurer could reimburse him. Unfortunately for him, the insurance company denied the claim, stating that he had breached the contract by not advising them promptly and because he made payment and admitted liability without their consent.

So what do you say to your client when it looks like the error is your's? Just tell him that you are aware of the problem and that you are there to help him solve it, but you can't talk about liability until you have reported the incident to your insurer or you could lose coverage. Then get to your insurer immediately.

In addition to the above, most insurance company applications have questions that require you to report all claims and known potential claims when applying for insurance.


In Summary, you pay a lot for professional liability insurance and you don't want to chance losing coverage because you didn't abide by the policy provisions. So don't admit liability or make any payment without the insurer's consent. Follow the reporting provisions of the policy and, even if you are not required to



report an incident that could lead to a claim, seriously consider doing so in order to take advantage of the problem solving expertise of the insurer's knowledgeable staff ■

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