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QUARTERLY RISK MANAGEMENT UPDATE

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Claims Retrospective: Understanding the Claims-Made Nature of Professional Liability Insurance Policies

Almost all professional liability (PL) insurance policies are written on a claims-made basis. It is important to understand the claims-made nature of your PL policy, as it is a fundamental aspect of your insurance coverage.

This type of insurance covers claims that are both first made during the policy period and reported in writing to the insurance carrier during the policy period. Coverage applies for claims made and reported to the insurer while the policy is in force, even if the activity giving rise to the claim occurred before the policy was purchased, as long as the wrongful act did not occur prior to the retroactive date.

Because actual claims often do not arise until long after the alleged activity is committed, most professional liability policies available are offered on a claims-made basis because it helps insurance carriers estimate potential losses and more accurately underwrite the risks involved.

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By way of contrast, most commercial general liability (CGL) insurance policies are written on an occurrence basis. When insurance coverage is written on an occurrence basis, the date of the occurrence is what determines whether there is potential for coverage under the policy. Specifically, the occurrence, typically bodily injury or property damage, must occur during the coverage period for there to be coverage under the policy.

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Accordingly, when coverage is written on an occurrence basis, there is a potential for covered claims to surface years after the policy expires. When coverage is written on a claims-made basis, there is little to no potential for covered claims to surface after the policy expires. Professional liability insurance policies are written on a claims-made basis because of the certainty that this type of underwriting affords the insurer. However, the claims-made nature of these insurance policies does create some potential pitfalls for unwary insureds who do not take the time to read and understand the nature of their claims-made policies.

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Claims-made coverage may require responsible professionals to keep coverage in force for years after they stop practicing. This will depend on the applicable statutes of limitations and/or repose, as claims may surface years after the alleged act, error, or omission on which they are based. If a claim arises years after the professional services occurred, and the professional has no current PL policy in place, he or she will face uncovered exposure. Most insurance companies offer coverage designed to address this situation, typically referred to as tail coverage.

Claims-made coverage requires professionals to maintain continuous coverage so as not to lose coverage for their prior acts, errors, and omissions. This is due to the fact that PL policies have retroactive dates, or dates after which the act, error, or omission must occur in order for there to be a potential for coverage under the policy. If a professional lets his or her coverage lapse, the retroactive date on his or her new policy will usually be the inception date of the new policy. Thus, the professional will not have coverage for any claim arising from acts, errors, or omissions occurring prior to that date. As explained above, this will lead to the possibility of uncovered exposure due to the lag time between when an act, error, or omission occurs and when a claim is actually made based on the act, error, or omission.

As you can see, it is imperative that today's professionals understand the fundamental claims-made nature of their PL coverage. Professional engineers with coverage under the ASCE program should not hesitate to discuss this further with their representatives at Pearl Insurance or the professionals available to them through the ASCE hotline.

Know Your State's Reporting Requirements Regarding Settlements and/or Judgments

By Jamie Cucci, Esq.

All professional architects and engineers risk having claims brought against them in relation to their work. Some claims may have merit. However, some professionals can get caught in a wide net cast by a claimant trying to recoup unexpected losses, regardless of actual fault. Notwithstanding the frivolity of a claim, once a case settles or a judgment is rendered, you may be obligated by your state to report the settlement or judgment to your professional board.

Some states have rules which require licensed professionals to self-report settlements and judgments. Professional liability (PL) insurance carriers have similar requirements in some states, which could make it easy for your state regulators to spot an architect or engineer who fails to self-report. In some states, even the court rendering the judgment or settlement must report it to the state board.

For example, the state of Colorado requires insureds and insurers for architects and engineers to report any malpractice claims, which are settled or in which a judgment has been rendered against the insured, within 90 days of the settlement or judgment.[1]

[1] State of Colorado, Department of Regulatory Agencies, Division of Insurance, Bull. No. B-5.17, Reporting of Malpractice Claims Against A Licensed Architect Or Corporation Or Partnership Or A Group Of Persons Practicing Architecture (2007).

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Licensed professionals are also subject to a self-reporting requirement for malpractice claims within 60 days of settlement or judgment in claims related to their services. In fact, under Colorado Statutes governing engineers, surveyors, and architects, the failure to report a settlement or judgment may be grounds for disciplinary action[2] and punishable by a fine of up to $5,000 for each violation.[3]

In California, the Business and Professions Code imposes a similar reporting requirement. The California Code varies from the Colorado statute, stating that architects, engineers, and surveyors must report any settlement or administrative action to the board only if the value of the settlement is $50,000 or greater.[4] Professionals must report judgments and arbitration awards if the award is valued at $25,000 or greater.[5]

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Some states do not have settlement reporting requirements while in other states, self-reporting must be done using specific forms. A licensed professional's requirements will vary from state to state, and it is important for all architects and engineers to become familiar with their state board's rules.

Unfortunately, claims and lawsuits against architects and engineers for malpractice or professional negligence are common. Just remember: once a claim is resolved, your responsibilities might not be at an end. It is essential to know the rules and requirements of the state who issued your license in order to avoid the unnecessary pitfall of failing to report a settlement or judgment.

Time to Renew? Submit your application for coverage in a timely fashion to allow adequate time for review. This applies to both new and renewal applications. Make sure the application is completed accurately. All questions are important and if they're not answered completely, it may work to your disadvantage or even delay the process. In short, how you fill out your application has a direct bearing on how your premium is determined and the length of time for the process.

[2] Colo. Rev. Stat. § 12-25-108(1)(k) (2014).

[3] Colo. Rev. Stat. § 12-25-108(4)(a) (2014).

[4] Cal. Bus. & Prof. Code § 6770(a)(3) (2008)

[5] Cal. Bus. & Prof. Code § 6770(a)(4) (2008)

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