

HALL & COMPANY

Serving Architects, Engineers and Environmental Consultants

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Reporting Potential Professional Liability Claims to your Insurance Carrier

Our clients often call to ask us if they should report a situation to their professional liability insurance company. The question arises because an event has occurred that causes our client to believe a claim could develop from the situation. This is often long before anyone has been alleged that they have any responsibility for the issue.

The timing in which potential claims, or circumstances, are reported is important. As an insured, you have an obligation to report to your insurance carrier, during the policy period in which you first become aware of them, any circumstances that might reasonably give rise to a claim. Furthermore, upon your annual insurance renewal, the new insurance policy will exclude coverage for any known circumstances that would reasonably give rise to a claim.

Professional liability insurance policies are “claims made” policies. As such they are designed to allow Insureds to report circumstances to their insurance company and thereby preserve their right to coverage for any claim that may result from them. This is true even if an actual claim is not made until years later.

Despite the fact that professional liability policies allow for reporting of potential claims circumstances, many clients are reluctant to report them to their insurance company because they believe it will adversely impact their insurance premium at renewal. This is largely a misconception. Insurance companies understand the difference between a claim and a circumstance and intentionally disregard reported circumstances in their underwriting of premiums so there is little or no risk in reporting a potential claim to your insurance carrier. On the other hand, there is significant risk in choosing not to do so.

Some firms ultimately report a claim to their insurance companies only to have it denied. This is often because there is evidence that the firm had knowledge of the situation that led to the claim before the current policy period. For example, a chain of emails discussing the situation that led to the claim.

It Pays to Report Circumstances

We have numerous clients that annually report circumstances to their insurance company. Some of these circumstances develop into future claims, many do not. These clients receive a stable and competitive premium from their carriers despite the reported circumstances. In fact, these clients are even considered by their insurance companies to the “best accounts”. This is because insurance companies prefer to have Insureds that are proactive in partnering with them to minimize the cost of claims for all parties involved.

Insurance companies want their Insureds to report circumstances because they believe they can best mitigate potential future losses by providing pre-claims assistance. They know that an ounce of prevention is worth a pound of cure. They also know if they increase premiums based on reported circumstances that they will discourage reporting and thereby increase their own future losses.



When is the right time to report a potential claim?

"Informing us (as your agent) of a claim, or circumstance that might lead to a claim, does not meet the reporting requirements of your insurance policy. They need to be reported directly to your insurance company."

to ask if a situation should be reported, then the time is right to report this circumstance directly to your insurance carrier. Informing us (as your agent) of a claim, or circumstance that might lead to a claim, does not meet the reporting requirements of your insurance policy. Claims and circumstances need to be reported directly to the insurance company.

Another answer to the question another way a potential claim should be reported it when you promptly after becoming aware of property damage, injury, or economic loss on a project you are working on or have worked on. Often attorneys will ultimately name all the design and construction firms that worked on a project, even the firms that did not perform the work that caused the problem. Attorneys know that these firms will pay nominal settlement amounts to be released from a claim, rather than incur the cost of proving it was not their work that caused the loss.

Finally, know that you will not be penalized but instead rewarded for doing what is prudent to preserve your coverage for a situation that may or may not develop into a future claim.

Case Study

In 2012 an architectural firm in the Southeast was made aware of a problem with the exterior panels on a school that they had designed. The architectural firm did not believe they were responsible for the issue and did not report the situation to their insurance company when they were made aware of it.

The architectural firm estimated the damages to be \$75,000. They had a \$50,000 deductible and chose to handle the situation without the insurance company's involvement feeling confident that they would not be sued. The situation evolved for over a year before the architect was sued, and the damages ballooned to \$175,000.

It was at this time that the architectural firm reported a claim to their insurance carrier. The insurance carrier declined to cover the claim for two reasons:

1. The claim was not reported in the insurance policy period that the architectural firm was first made aware of the problem.
2. The architectural firm tried to resolve the claim without the insurance company's involvement.

The financial hardship and internal stress from this uncovered claim was too much for the firm to absorb. They made the difficult decision to dissolve their firm and then split into three smaller companies, two of which are still in existence.

In Summary

In summary, insurance companies can, and do, deny claims if there is evidence of knowledge of a circumstance that might reasonably give rise to a claim prior to the current policy period. Therefore, it is best to exercise caution and report each and every situation that might reasonably lead to a claim in order to preserve your insurance coverage.

Hall & Company specializes in the placement of professional liability insurance for Architects, Engineers and Environmental Consultants. We are independent insurance agents and place coverage in all 50 States.

We currently represent over 4,000 design firms nationwide and have access to over 50 Professional Liability Insurance carriers.