

SPEECH OUTLINE TO ATTORNEYS AT
NORTHERN TRUST ROUNDTABLE
SEGMENT #2 OF 3:
PROFESSIONAL LIABILITY INSURANCE

KEY INFORMATION:

- Professional Liability is almost always completely excluded from a business General Liability Insurance Policy.
- Professional liability has typically evolved as various versions of the Commercial General Liability Policy Form have had claims denied through the courts, over a transitional period of many years.

CONTENTUOUS ISSUES IN PROFESSIONAL LIABILITY COVER:

- Professional liability insurance usually covers both defense costs and any awards or settlements. A trend in settlement that has evolved over time is that an insurer often invokes into policy language what is known as a “Hammer Clause”- whereby an insurer has an absolute, and one-sided right to force settlement terms upon an insured. If the insured does not agree to the settlement “hammer” of the insurer, the insured becomes responsible for any costs- including judgment against the insured- in excess of what the insurer has agreed to settle for with the plaintiff or accuser against the insured.
- Panel Counsel- very often the insurer has a set list of attorneys, ranging from small to large law firms, that an insured is forced to choose from to represent them in the defense of their claim. Often, insured’s feel that there is a conflict of interest as the law firm, paid by the insurer, may be “pressed” by the insurer to settle the case early, and at the lowest cost to the insurer. There have been numerous instances where, between the “hammer clause” and the “panel counsel” requirement, the insured has felt forced into settlement, against their best interests.
- “Warranty Application”- “Could have known, Should have known” language in the application- claims have often been denied by insurers where the insurer argues that the insured had “reason to believe that information known to the applicant at the time of application completion “might” lead to a claim- then the claim gets denied by the insurer, or the policy is rescinded. This has lead to

numerous “bad faith claims against the insurers” as these claims are denied or current in-force policies are rescinded by the insurer.

- Notification of claim in a timely manner to insurer- sometimes there is specific policy language, such as “60 days to notify insurer from written notice of pending suit or claim against insured”, or sometimes much more vague language such as “as soon as practicable”. Again, this has led to numerous instances of denial of cover by the insurer, and sometimes the insured hiring counsel to press a “bad faith claim” against the insurer for denial of cover.”
- Professional liability Insurance policies are almost always “Claims Made” Policies, not “Occurrence” Policies. Often an insured was not explained the difference between these two types of policies by their agent. A homeowners policy is an occurrence policy form as the claim against the insured can be filed at any time and the timing on the claim can be made at any time during the policy period or after the policy period into the future for any time that the incident “occurred” during the time the policy was in effect, even if the policy during that time has long since “expired”. In contrast, in a “claims made form” the claim must be made during the time that the policy is in effect or during an extended reporting period, commonly known as a “tail”.

SOME TYPES OF PROFESSIONAL LIABILITY POLICIES:

- Directors and Officers (D&O)
- Employment Practice Liability (EPL)
- Medical Malpractice
- Professional Legal Liability
- Real Estate Agents Errors and Omissions, Title Agency E&O
- Architects E&O
- Consultants E&O
- Miscellaneous E&O
- Manuscripted Specific E&O Forms

PROFESSIONAL LIABILITY UNDERWRITING SOCIETY

- P.L.U.S. Goals- insurance professionals, attorneys, others.
- Newsletter, annual, and topic specific meetings

END OF TOPIC

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