



Insurance Brokers &  
Consultants

# Managing Risk in the New Normal

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# Evolving Risk Culture



As the profession continues to evolve through firm M&A, broader services offerings and non-centralized work environments, the key risks facing firms have shifted. We will discuss the evolving areas of risk, best practices and corresponding insurance coverage implications.

## **Professional Firm Exposures and Risk Transfer Vehicles**

### **Key Risk Concerns**

**People**

**Mergers & Acquisitions**

**Professional Standards/Regulatory Concerns**

**Clients**

### **Professional Liability Basics**

# Key Professional Firm Exposures and Risk Transfer Vehicles\*

Exposure	Risk Transfer Vehicle
Errors & Omissions	Professional Liability Insurance
Employment Related Acts	Employment Practices Liability Insurance
Governance and Management Activities	Management Liability Insurance (D&O)
Data Security & Privacy	Network & Privacy Risk Insurance (Cyber)
Employee Benefit Plan Administration	Fiduciary Liability Insurance
Employee Theft & Dishonesty	Crime Insurance

\*This illustration does not include traditional property & casualty coverages (Building & Premises, Auto, General Liability, etc.)



# People

- Attracting and Retaining Talent
- Remote Employees
- Partners
- Non- CPA Practitioners
- Compensation Structure
- Diversity & Inclusion



# Mergers & Acquisitions

- Up Front Due Diligence
  - Background Checks
  - Why do it? (Clients, Talent, Niche, Reach)
  - Do cultures align?
  - Is there a winner?
  - Fee Synergy?
  - Comparable clients?
- Integration
  - Culture
  - Leadership Structure
  - Systems
  - Client Transition

# About Clients....

- Client Acceptance and Continuance
- Engagement Letters
- Engagement Creep
- Trustee Relationships
- Stay in your lanes



# Claims Made Coverage

# Claims Made vs. Occurrence Coverage

## Claims Made Coverage

= Coverage is triggered when a claim is made.

## Occurrence Coverage

= Coverage is triggered when a claim “occurs”

## Claims Made and Reported Coverage

= Coverage triggers when a claim is made and reported during the policy period or Extended Reporting Period Endorsement (ECRP or Tail).

## How this works

Most Professional Liability Insurance is written on a “Claims Made” or Claims Made and Reported Basis”



# Understanding Claims Made and Reported Coverage



- Key terms and principles to understand
- Retro Active Date
- Full Prior Acts
- Individual Prior Acts Dates
- Professional Services Definition
- Tail Coverage (Extended Claim Reporting Period Endorsement or ECRP)

# The Importance of the Insurance Application

The majority of coverage disputes between insureds and underwriters stem from allegations of non-disclosure or material misrepresentation during the insurance renewal process.

- The firm did not advise of a “potential claim” during the prior policy period.
- The firm did not disclose a prior reported claim, matter or circumstance.
- The application does not accurately depict the practice.

# Sample Application Claims Polling Questions

During the past five years, has any professional liability claim or suit been made or brought against any of the following:

- a. You, your firm, or any member of your firm? .....Yes No
- b. Any predecessor firm? .....Yes No
- c. Any former member of your firm or predecessor firm for professional services while a member of such firm?..... Yes No

*If yes to any of the above, please provide the number of claims or suits and complete a Claim, Suit, or Incident Supplement for each claim or suit*

Do you or any member or employee of your firm have knowledge of any incident, act, error, or omission that is or could be the basis of a claim under this proposed professional liability policy?..... Yes No

*If yes, please provide the number of incidents, acts, errors, or omissions and complete a Claim, Suit, or Incident Supplement for each such incident, act, error, or omission.*

# Application Warranty Language

## **SIGNATURE AND AUTHORIZATION**

The undersigned authorized representative of the firm, or individual if this application is for an individual, agrees to all of the following:

- The statements and representations made in this application are true and complete and will be deemed material to the acceptance of the risk assumed by the company in the event an insurance policy is issued.
- If the information supplied in this application changes between the date of the application and the effective date of any insurance policy issued by the company in response to this application, you will immediately notify us of such changes, and we may withdraw or modify any outstanding quotation or agreement to bind coverage.
- The company is authorized to make an investigation and inquiry in connection with this application.
- The company is not bound or obligated to issue any insurance policy or to provide the insurance requested in this application.

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Signature\* (Partner, Member, Officer, Shareholder)

Date

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Name (print)

Title

# Sample Policy Definitions to Understand

## A Claim Means:

1. a demand for money or services;
2. a civil proceeding commenced by service of a complaint or similar pleading; or
3. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding

Against any **Insured** for a **Wrongful Act**.

A **Claim** will be deemed to be made on the earliest date such notice thereof is received by any **Principal insured**.

**Wrongful Act** means any: actual or alleged act, error, omission or Personal Injury Offense in the rendering of or failure to render, Professional Services, by the **Named Insured** or any **Predecessor Firm**, or by any other **Insured** while acting within the scope of their duties on behalf of the **Named Insured** or any **Predecessor Firm**.

# Sample Policy Claim Report Requirement

In the event a **Principal Insured** becomes aware that a **Claim** has been made against any **Insured**, the **Insured**, as a condition precedent to any rights under this policy, will give to the Company written notice of the particulars of such **Claim**, including all facts related to any alleged **Wrongful Act**, the identity of each person allegedly involved in or affected by such **Wrongful Act**, and the dates of the alleged events, as soon as practicable. The **Insured** will give the Company such information, assistance and cooperation as the Company may reasonably require.

If a **Principal Insured** becomes aware of a **Potential Claim** and gives the Company written notice during the **Policy Period** of the particulars of such **Potential Claim** including:

- A. all known facts related to the **Potential Claim**;
- B. the identity, if known, of each person allegedly involved in or affected by such **Potential Claim**;
- C. the date such persons became aware of the **Potential Claim**;
- D. the dates of the alleged events; and
- E. the reasons for anticipating a **Claim**,

any **Claim** subsequently made against any **Insured** arising out of such **Potential Claim** will be deemed to have been made on the date such notice was received by the Company.

All notices under this section must be sent or delivered to the Company set forth in ITEM 3 of the Declarations and will be effective upon receipt.

# Sample Policy Language Notice of Potential Claims

If a **Principal Insured** becomes aware of a **Potential Claim** and gives the Company written notice during the **Policy Period** of the particulars of such **Potential Claim** including:

- A. all known facts related to the **Potential Claim**;
- B. the identity, if known, of each person allegedly involved in or affected by such **Potential Claim**;
- C. the date such persons became aware of the **Potential Claim**;
- D. the dates of the alleged events; and
- E. the reasons for anticipating a **Claim**,

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# Questions to Ask, Accepting Terms and Current Market Conditions



# Questions and Considerations Prior to Renewing Coverage

## What is and Who are covered:

- Be sure all services provided were disclosed in the insurance application.
- Be sure all claims and potential claims have been reported under the expiring policy prior to new policy inception.
- Be sure all claims and potential claims were disclosed in the insurance application.
- Review renewal terms. Pay close attention to quote subjectivities and listed endorsements.
- Request and review a policy specimen including all proposed endorsements.
- Pay careful attention to policy exclusions.
- Pay close attention to any Firm retroactive dates.
- For M&A transactions, review and discuss predecessor firm definitions, specific entity exclusion endorsements, etc. with your broker