



RISK MANAGEMENT 101

AHERN INSURANCE BROKERAGE

Understanding Claims & Tolling Agreements

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Understanding potential insurance claims, actual insurance claims and tolling agreements can be difficult for even the most seasoned attorney. By not properly disclosing a potential or actual claim, you can be putting your firm at risk. When presented with a tolling agreement, you must strategically determine your course of action. [Click here to learn how to avoid the pitfalls of claims and tolling agreements.](#)

Claims and Your Policy

Many lawyers struggle with reporting a "potential claim" to their insurance carrier because such claims are difficult to define and may affect future insurance coverage. One piece of simple advice: Always report all claims filed against you, and always report matters that you believe have a reasonable basis to evolve into a claim.

The following are facts about claims and suggestions to ensure your claims are handled properly:

- Understand how your policy defines a claim and communicate such to all members of the firm. A typical definition would be "A demand for money or services, or the filing of a suit or institution of arbitration proceedings or alternative dispute resolution naming an insured and alleging a negligent act, error, omission, or personal injury resulting from the rendering of or failure to render professional services."
- Some policies require a "written demand," while others require just a "demand," which includes verbal demands. Know which your policy requires.
- Most policies also have a "discovery provision," which refers to the reporting of potential claim matters. By notifying the carrier of a potential claim during the policy period, you are actually triggering coverage for that claim under the current policy, regardless of when the actual claim is filed.
- By reporting potential claims you will not run the risk of a carrier denying coverage on a claim based on the issue of your prior knowledge. This also allows new carriers to evaluate your risk without having to take on the liability of these potential matters.
- Make sure you are consistent with your reporting procedures and provided detailed narratives around the facts and circumstances of a claim or potential claim.
- Take time to carefully evaluate matters that may have potential claim exposure. In hard market conditions underwriters are looking at potential claims as closely as actual claims.
- Reporting potential claims should have little impact on a firm's ability to secure favorable insurance terms.
- Talk to your insurance broker and/or insurance defense attorney about whether to report a potential claim.

- Having an established, sophisticated insurance provider makes the process of reporting potential claims simple.

Tolling Agreements

Lawyers also struggle with tolling agreements - an agreement to waive a right to claim that litigation should be dismissed due to the expiration of a statute of limitations. There are advantages and disadvantages to signing a tolling agreement when presented by a client who may sue for malpractice.

The following points provide you with more information:

- Each situation regarding a tolling agreement is different. The decision to sign such an agreement should be done strategically.
- Your carrier and defense counsel can help determine the best strategy based upon the specifics of the situation.
- A tolling agreement should contain a finite duration (with the possibility of renewal if the parties agree).
- A tolling agreement should also describe the claim that is subject to the agreement with reasonable specificity.
- Never sign a tolling agreement without the consent of your carrier.