



PROFESSIONAL LIABILITY

**NO MATTER WHAT WE CALL IT,
KEY THINGS WE NEED TO KNOW**

HELLO KAIA




1




Disclaimer

DISCLAIMER



▶ INSURANCE FORMS AND ENDORSEMENTS VARY BASED ON INSURANCE COMPANY; CHANGES IN EDITION DATES; REGULATIONS; COURT DECISIONS; AND STATE JURISDICTION. THESE INSTRUCTIONAL MATERIALS PROVIDED BY LAURUS INSURANCE CONSULTING ARE INTENDED AS A GENERAL GUIDELINE AND ANY INTERPRETATIONS PROVIDED BY LAURUS DO NOT MODIFY OR REVISE INSURANCE POLICY LANGUAGE. THE AUTHOR OF THESE MATERIALS, LAURUS INSURANCE CONSULTING, IN PROVIDING THESE MATERIALS, ASSUMES NEITHER LIABILITY NOR RESPONSIBILITY TO ANY PERSON OR BUSINESS WITH RESPECT TO ANY LOSS THAT IS ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY AS A RESULT OF THE INSTRUCTIONAL MATERIALS PROVIDED.

▶ COPYRIGHT 2021 - 2024, ALL RIGHTS RESERVED



2

WHAT WE'LL COVER TODAY



- WHAT IS PROFESSIONAL LIABILITY
- POLICY BASICS AND COMMONALITIES
- THE APPLICATION IS KEY
- SAMPLE POLICY COVERAGES AND ACTUAL LOSSES PAID
- TYPICAL EXCLUSIONS AND AREAS OF CONCERN



3

WHAT IS "PROFESSIONAL LIABILITY"


- MALPRACTICE - A DERELICTION OF PROFESSIONAL DUTY OR A FAILURE TO EXERCISE AN ORDINARY DEGREE OF PROFESSIONAL SKILL OR LEARNING BY ONE (AS A PHYSICIAN) RENDERING PROFESSIONAL SERVICES WHICH RESULTS IN INJURY, LOSS, OR DAMAGE
 - MERRIAM-WEBSTER.COM

4

WHAT IS "PROFESSIONAL LIABILITY"

- PROFESSIONAL LIABILITY - A TYPE OF LIABILITY COVERAGE DESIGNED TO PROTECT TRADITIONAL PROFESSIONALS (E.G., ACCOUNTANTS, ATTORNEYS) AND QUASI-PROFESSIONALS (E.G., REAL ESTATE BROKERS, CONSULTANTS) AGAINST LIABILITY INCURRED AS A RESULT OF ERRORS AND OMISSIONS IN PERFORMING THEIR PROFESSIONAL SERVICES.
 - WWW.IRML.COM
- ERRORS & OMISSIONS - AN INSURANCE FORM THAT PROTECTS THE INSURED AGAINST LIABILITY FOR COMMITTING AN ERROR OR OMISSION IN PERFORMANCE OF PROFESSIONAL DUTIES. GENERALLY, SUCH POLICIES ARE DESIGNED TO COVER FINANCIAL LOSSES RATHER THAN LIABILITY FOR BODILY INJURY (BI) AND PROPERTY DAMAGE (PD).
 - WWW.IRML.COM



5

INTERCHANGEABLE?




- IN **COMMON USE** – MALPRACTICE, ERRORS AND OMISSIONS, PROFESSIONAL LIABILITY – ALL ARE USED INTERCHANGEABLY
- MALPRACTICE – NORMALLY APPLIED WHEN ONE IS IN CONTACT WITH THE BODY
- E & O – NORMALLY USED WHEN ONE REPRESENTS THEMSELVES TO THE PUBLIC AS HAVING SPECIAL SKILLS IN THEIR PROFESSION




6

DIFFERENT FROM GENERAL LIABILITY

- CGL – BI, PD, PI, AI
- NOT TRUE WITH PROFESSIONAL
- CAUSED BY AN OCCURRENCE WHICH WAS NEITHER INTENDED NOR EXPECTED BY THE INSURED
- CGL EXCLUDES PROFESSIONAL LIABILITY EXPOSURES



7

DESIGNED FOR SPECIALIZED PRACTICES



- PHYSICIANS & SURGEONS
- LAWYERS
- ACCOUNTANTS
- ENGINEERS
- CONSULTANTS
- AGENTS & BROKERS
 - INSURANCE
 - REAL ESTATE
- CONTRACTORS
- FLORISTS
- PHOTOGRAPHERS
- FUNERAL DIRECTORS
- PHARMACISTS
- BARBERS/BEAUTICIANS
- PRINTERS



8

SOME THINGS TO KNOW

- NO LIMIT ON THE # OF CLAIMS PER NEGLIGENT ACT
- LIMIT OF LIABILITY APPLIES PER CLAIM
- DEFENSE OFTEN "WITHIN" THE LIMIT OF LIABILITY
- REPUTATIONAL PROTECTION – INSURED CAN DECIDE TO GO COURT OR NOT
- EXCLUSIONS OFTEN APPLY FOR THE "GUARANTEEING" OF A SPECIFIC RESULT FROM A TREATMENT

9

POLICY BASICS, COMMONALITIES & THINGS TO LOOK AT

- A. INSURING AGREEMENTS
- B. COVERED PERSONS – THE INSURED & OTHERS
- C. COVERED SERVICES – WHAT'S COVERED ?
- D. COVERAGE TERRITORIES – AND WHERE ?
- E. CONSENT TO SETTLE
- F. DEFENSE COSTS
- G. RETENTIONS VS. DEDUCTIBLES



10

A. INSURING AGREEMENTS

- THE COMPANY WILL PAY ON BEHALF OF THE **INSURED, LOSS** FOR ANY **CLAIM** FIRST MADE DURING THE **POLICY PERIOD**, OR IF EXERCISED, DURING THE EXTENDED REPORTING PERIOD OR RUN-OFF EXTENDED REPORTING PERIOD FOR A **WRONGFUL ACT**.
- THE COMPANY WILL REIMBURSE THE **INSURED** FOR **DISCIPLINARY PROCEEDING EXPENSES** INCURRED IN RESPONDING TO A **DISCIPLINARY PROCEEDING** COMMENCED DURING THE **POLICY PERIOD**, OR IF EXERCISED, DURING THE EXTENDED REPORTING PERIOD OR RUN-OFF EXTENDED REPORTING PERIOD. THE MAXIMUM AMOUNT AVAILABLE FOR **DISCIPLINARY PROCEEDING EXPENSES** WILL BE \$25,000 FOR EACH **POLICY PERIOD**, REGARDLESS OF THE NUMBER OF **DP'S**, AND ANY PAYMENT MADE HEREUNDER WILL NOT BE SUBJECT TO A RETENTION AND WILL NOT REDUCE ANY APPLICABLE LIMIT OF LIABILITY.
 - TRAVELERS SAMPLE POLICY LANGUAGE




11

The Basic Parts of an Insurance Contract

1. Declarations
2. Definitions
3. Insuring Agreement
4. Exclusions
5. Conditions
6. Deductibles
7. Miscellaneous Provisions
8. Insured
9. Rates And Endorsement

A. INSURING AGREEMENTS

- THE **INSURER** WILL PAY ON BEHALF OF THE **INSURED, LOSS** IN EXCESS OF THE APPLICABLE RETENTION FROM ANY **CLAIM** FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE **INSURER** DURING THE **POLICY PERIOD** OR ANY APPLICABLE EXTENDED REPORTING PERIOD, FOR A **PROFESSIONAL SERVICES WRONGFUL ACT** COMMITTED ON OR AFTER THE APPLICABLE **RETROACTIVE DATE** AND BEFORE THE END OF THE **POLICY PERIOD**.
 - DARWIN SAMPLE POLICY LANGUAGE



12

A. INSURING AGREEMENTS



- THE **COMPANY** WILL PAY ON BEHALF OF THE **INSURED** ALL SUMS IN EXCESS OF THE RETENTION THAT THE **INSURED** SHALL BECOME LEGALLY OBLIGATED TO PAY AS **DAMAGES** AND **CLAIMS EXPENSES** BECAUSE OF A **CLAIM** FIRST MADE AGAINST THE **INSURED** AND REPORTED TO THE **COMPANY** DURING THE **POLICY PERIOD** BY REASON OF A **WRONGFUL ACT** COMMITTED ON OR SUBSEQUENT TO THE **RETROACTIVE DATE** AND BEFORE THE END OF THE **POLICY PERIOD**.
- ACE SAMPLE POLICY LANGUAGE



13

**B. COVERED PERSONS
TRAVELERS: INSURED PERSON
& INSURED ORGANIZATION**


- **INSURED PERSON** MEANS ANY NATURAL PERSON WHO WAS, IS OR BECOMES A MEMBER OF THE BOARD OF DIRECTORS, OFFICER, **EMPLOYEE**, PARTNER OR **LLC MANAGER** OF THE **INSURED ORGANIZATION** FOR A **WRONGFUL ACTS** COMMITTED IN THE DISCHARGE OF HIS OR HER DUTIES AS SUCH.
- **EMPLOYEE** MEANS A NATURAL PERSON WHOSE LABOR OR SERVICE IS ENGAGED BY AND DIRECTED BY THE **INSURED ORGANIZATION** AND:
 - WHO IS ON THE PAYROLL OF THE **INSURED ORGANIZATION**, INCLUDING;
 - ANY IN HOUSE GENERAL COUNSEL OF THE **INSURED ORGANIZATION**; AND
 - ANY OTHER FULL-TIME, PART-TIME, TEMPORARY, AND SEASONAL WORKERS; OR
 - WHOSE SERVICES HAVE BEEN LEASED TO THE **INSURED ORGANIZATION**.

14

**B. COVERED PERSONS
DARWIN: INSURED & EMPLOYEE**

1. THE NAMED INSURED;
2. ANY SUBSIDIARY
3. ANY PAST, PRESENT, OR FUTURE DIRECTOR, OFFICER, OWNER, PARTNER, MEMBER, MANAGER, OR EMPLOYEE OF THE NAMED INSURED OR ANY SUBSIDIARY, ONLY WHILE ACTING WITHIN THE SCOPE OF THEIR DUTIES FOR THE NAMED INSURED OR ANY SUBSIDIARY
4. AN INDEPENDENT CONTRACTOR, BUT ONLY WHILE PERFORMING PROFESSIONAL SERVICES SOLELY ON BEHALF OF THE NAMED INSURED OR ANY SUBSIDIARY; AND




15

**B. COVERED PERSON
DARWIN: INSURED & EMPLOYEE**

5. ANY **JOINT VENTURE** AND ANY EMPLOYEE OF ANY SUCH **JOINT VENTURE**, BUT ONLY IF SUCH **JOINT VENTURE** IS SPECIFICALLY SCHEDULED ON AN ENDORSEMENT TO THIS POLICY AND ONLY WITH RESPECT TO THE PERFORMANCE OF OR FAILURE TO PERFORM **PROFESSIONAL SERVICES** BY THE **NAMED INSURED**.

NAMED INSURED MEANS THE ENTITY NAMED IN ITEM 1 OF THE DECLARATIONS.


EMPLOYEE MEANS ANY W-2 WAGE-EARNING FULL-TIME OR PART-TIME EMPLOYEE OF THE **NAMED INSURED** OR ANY **SUBSIDIARY**.



16

**B. COVERED PERSONS
ACE: INSURED MEANS...**


1. THE **NAMED INSURED**;
2. ANY **SUBSIDIARY**, BUT ONLY WITH RESPECT TO **WRONGFUL ACTS** WHICH OCCUR WHILE IT IS A **SUBSIDIARY**;
3. ANY PAST OR PRESENT PRINCIPAL, PARTNER, OFFICER, DIRECTOR, TRUSTEE OR EMPLOYEE OF THE **NAMED INSURED** OR **SUBSIDIARY** THEREOF (AND IF THE **NAMED INSURED** IS A PARTNERSHIP, LLP OR LLC, THEN ANY GENERAL OR MANAGING PARTNER OR PRINCIPAL THEREOF), BUT ONLY WITH RESPECT TO **PROFESSIONAL SERVICES** PERFORMED ON BEHALF OF THE **NAMED INSURED** OR ANY **SUBSIDIARY**.



17

**B. COVERED PERSONS
ACE: INSURED MEANS...**

4. THE ESTATE, HEIRS, EXECUTORS, ADMINISTRATORS OR LEGAL REPRESENTATIVES OF ANY **INSURED** DESCRIBED IN PARAGRAPH 3 ABOVE IN THE EVENT OF SUCH **INSURED'S** DEATH, INCAPACITY, INSOLVENCY, OR BANKRUPTCY, BUT ONLY TO THE EXTENT THAT SUCH **INSURED** WOULD OTHERWISE BE PROVIDED COVERAGE UNDER THIS **POLICY**; AND
5. INDEPENDENT CONTRACTORS WHO ARE NATURAL PERSONS, BUT ONLY WITH RESPECT TO **PROFESSIONAL SERVICES** PERFORMED ON BEHALF OF THE **NAMED INSURED** OR **SUBSIDIARY** THEREOF.



18

**C. COVERED SERVICES
TRAVELERS**


- **WRONGFUL ACT** MEANS ANY ACTUAL OR ALLEGED ACT, ERROR, OMISSION, MISSTATEMENT, MISLEADING STATEMENT, OR BREACH OF DUTY OR NEGLIGENCE BY OR ON BEHALF OF, OR ANY MATTER ASSERTED AGAINST, AN **INSURED** IN THE RENDERING OF OR FAILURE TO RENDER **PROFESSIONAL SERVICES**.
- **PROFESSIONAL SERVICES** MEANS ONLY THOSE SERVICES PERFORMED FOR OTHERS SET FORTH IN ITEM 5 OF THE DECLARATIONS.



19

**C. COVERED SERVICES
DARWIN**


- **WRONGFUL ACT** MEANS ANY **PROFESSIONAL SERVICES WRONGFUL ACT** OR **EMPLOYMENT PRACTICES WRONGFUL ACT** (IF PURCHASED)
- **PROFESSIONAL SERVICES WRONGFUL ACT** MEANS ANY ACTUAL OR ALLEGED:
 - (1) NEGLIGENT ACT, ERROR, OMISSION, MISSTATEMENT, MISLEADING STATEMENT, NEGLIGENCE OR BREACH OF DUTY; OR
 - (2) **PERSONAL INJURY**;
BY AN **INSURED**, IN THE PERFORMANCE OF OR FAILURE TO PERFORM PROFESSIONAL SERVICES



20

**C. COVERED SERVICES
DARWIN**

- **PROFESSIONAL SERVICES** MEANS SERVICES PERFORMED BY AN **INSURED** FOR OTHERS:
 - (1) IN THE USUAL AND CUSTOMARY CONDUCT OF THE PROFESSION SET FORTH IN ITEM 5 OF THE DECLARATIONS FOR A FEE OR OTHER BUSINESS CONSIDERATION INURING TO THE BENEFIT OF THE **NAMED INSURED** OR ANY **SUBSIDIARY**; AND
 - (2) IN THE CAPACITY OF A NOTARY PUBLIC WHERE SUCH NOTARY SERVICES ARE INCIDENTAL TO THE PERFORMANCE OF SUCH PROFESSION, WHETHER OR NOT SUCH NOTARY SERVICES ARE PERFORMED FOR A FEE.



21



C. COVERED SERVICES ACE

- **WRONGFUL ACT** MEANS ANY ACTUAL OR ALLEGED NEGLIGENT ACT, ERROR, OMISSION, MISSTATEMENT, MISLEADING STATEMENT OR **PERSONAL INJURY OFFENSE** COMMITTED BY THE **INSURED** OR BY ANY OTHER PERSON OR ENTITY FOR WHOM THE **INSURED** IS LEGALLY LIABLE IN THE PERFORMANCE OF OR FAILURE TO PERFORM **PROFESSIONAL SERVICES**.
- **PROFESSIONAL SERVICES** MEANS ONLY THOSE SERVICES SPECIFIED IN ITEM 7 OF THE DECLARATIONS PERFORMED FOR OTHERS BY AN **INSURED** OR BY ANY OTHER PERSON OR ENTITY FOR WHOM THE **INSURED** IS LEGALLY LIABLE.



22

D. COVERAGE TERRITORIES





- **TRAVELERS** – SILENT, NOT DEFINED
- **DARWIN** – THIS POLICY APPLIES TO **WRONGFUL ACTS** COMMITTED BY ANY **INSURED**, OR TO ANY **CLAIM** BROUGHT AGAINST THE **INSURED**, ANYWHERE IN THE WORLD.
- **ACE** – COVERAGE UNDER THIS **POLICY** SHALL EXTEND TO **WRONGFUL ACTS** TAKING PLACE ANYWHERE IN THE WORLD, PROVIDED THAT THE **CLAIM** IS MADE WITHIN THE JURISDICTION, AND SUBJECT TO THE SUBSTANTIVE LAWS OF THE UNITED STATES OF AMERICA, CANADA, OR THEIR TERRITORIES OR POSSESSIONS.



23

E. CONSENT TO SETTLE TRAVELERS


- **SETTLEMENT:** THE COMPANY MAY, WITH THE WRITTEN CONSENT OF THE **INSURED**, MAKE SUCH SETTLEMENT OR COMPROMISE OF ANY **CLAIM** AS THE COMPANY DEEMS EXPEDIENT. IN THE EVENT THAT THE COMPANY RECOMMENDS AN OFFER OF SETTLEMENT OF ANY **CLAIM** WHICH IS ACCEPTABLE TO THE CLAIMANT(S), AND IF THE **INSURED** REFUSES TO CONSENT TO SUCH SETTLEMENT OFFER, THE **INSURED** WILL BE SOLELY RESPONSIBLE FOR 30% OF ALL DEFENSE EXPENSES INCURRED OR PAID BY THE **INSURED** AFTER THE DATE THE **INSURED** REFUSED TO CONSENT TO THE SETTLEMENT OFFER, AND THE **INSURED** WILL ALSO BE RESPONSIBLE FOR 30% OF ALL **LOSS**, OTHER THAN **DEFENSE EXPENSES**, IN EXCESS OF THE SETTLEMENT OFFER, PROVIDED THAT THE COMPANY'S LIABILITY UNDER THIS **LIABILITY COVERAGE** FOR SUCH **CLAIM** WILL NOT EXCEED THE LIMIT OF LIABILITY.

24

**E. CONSENT TO SETTLE
DARWIN**


- **DEFENSE & SETTLEMENT OF CLAIMS:**
- (1) NO **INSURED** MAY INCUR ANY **DEFENSE EXPENSES** OR ADMIT LIABILITY FOR, OR SETTLE, OR OFFER TO SETTLE, ANY **CLAIM** WITHOUT THE **INSURER'S** WRITTEN CONSENT. THE **INSURER** WILL HAVE THE RIGHT TO MAKE INVESTIGATIONS AND CONDUCT NEGOTIATIONS AND, WITH THE CONSENT OF THE **INSURED** WHICH SHALL NOT BE UNREASONABLY WITHHELD, ENTER INTO SUCH SETTLEMENT OF ANY **CLAIM** AS THE **INSURER** DEEMS APPROPRIATE. IF THE **INSURED** REFUSES TO CONSENT TO A SETTLEMENT ACCEPTABLE TO THE CLAIMANT IN ACCORDANCE WITH THE **INSURER'S** RECOMMENDATION, THEN, SUBJECT TO THE APPLICABLE LIMIT OF LIABILITY, THE **INSURER'S** LIABILITY FOR SUCH **CLAIM** WILL NOT EXCEED THE AMOUNT FOR WHICH SUCH **CLAIM** COULD HAVE BEEN SETTLED BY THE **INSURER** PLUS **DEFENSE EXPENSES** UP TO THE DATE THE **INSURED** REFUSED TO SETTLE SUCH **CLAIM**.



25


**E. CONSENT TO SETTLE
ACE**

- B. DEFENSE
- 2. THE **COMPANY'S** DUTY TO DEFEND ENDS IF THE **INSURED** REFUSES TO CONSENT TO A SETTLEMENT ACCEPTABLE TO THE CLAIMANT/PLAINTIFF AND THE **COMPANY**. IN SUCH EVENT, THE **COMPANY** SHALL TENDER A CHECK TO THE **INSURED** FOR THE RECOMMENDED SETTLEMENT AMOUNT, AND SHALL BE RELIEVED OF ANY FURTHER DUTY OR OBLIGATION, OTHER THAN FOR COVERED **CLAIMS EXPENSES** INCURRED UNTIL THE DATE OF SUCH REFUSAL. THE **INSURED** THEREAFTER HAS THE DUTY TO DEFEND AT ITS OWN EXPENSE. THIS PARAGRAPH SHALL NOT APPLY TO A SETTLEMENT IN WHICH THE TOTAL INCURRED **DAMAGES** AND **CLAIMS EXPENSES** DO NOT EXCEED THE RETENTION.




26

F. DEFENSE COSTS




- EACH CARRIER STATES THAT DEFENSE IS WITHIN THE LIMIT OF LIABILITY.
- EG: "THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES."



27

G. RETENTIONS VS. DEDUCTIBLES
 WWW.IRMI.COM


- **RETENTION:** A DOLLAR AMOUNT SPECIFIED IN A LIABILITY INSURANCE POLICY THAT MUST BE PAID BY THE INSURED BEFORE THE INSURANCE POLICY WILL RESPOND TO A LOSS.
- **DEDUCTIBLES** IN CONTRAST, THE INSURER WOULD PAY THE DEFENSE AND INDEMNITY COSTS ASSOCIATED WITH A CLAIM ON THE INSURED'S BEHALF AND THEN SEEK REIMBURSEMENT OF THE DEDUCTIBLE PAYMENT FROM THE INSURED.



28

RETENTIONS VS. DEDUCTIBLES
 (CONTINUED)

- FOR EXAMPLE, ASSUME THAT TWO POLICIES ARE IDENTICAL, EXCEPT FOR THE FACT THAT **POLICY A** IS WRITTEN WITH A **\$25,000 DEDUCTIBLE**, WHILE **POLICY B** CONTAINS A **\$25,000 SIR**. ALSO ASSUME THAT DEFENSE AND INDEMNITY PAYMENTS FOR A GIVEN CLAIM TOTAL \$100,000.
- IN THE EVENT OF A CLAIM UNDER **POLICY A**, THE INSURER WOULD PAY THE \$100,000 IN DEFENSE AND INDEMNITY COSTS THAT WERE INCURRED. AFTER THE CLAIM IS CONCLUDED, THE INSURER WILL BILL THE INSURED FOR THE \$25,000 IN PAYMENTS MADE ON THE INSURED'S BEHALF.
- IN THE EVENT OF A CLAIM UNDER **POLICY B**, THE INSURED WILL PAY THE FIRST \$25,000 OF DEFENSE/INDEMNITY COSTS, AFTER WHICH, THE INSURER WILL MAKE THE ADDITIONAL \$75,000 IN DEFENSE AND INDEMNITY PAYMENTS ON THE INSURED'S BEHALF.



29

THE APPLICATION IS KEY


- THE APPLICATION, SIGNED BY THE NAMED INSURED, BECOMES A PART OF THE POLICY.
- THE STATEMENTS MADE ON THE APPLICATION ARE WARRANTIES



30

REPRESENTATION OR WARRANTY

- **REPRESENTATIONS**
 - A STATEMENT MADE IN AN APPLICATION FOR INSURANCE THAT THE PROSPECTIVE INSURED REPRESENTS AS BEING CORRECT TO THE BEST OF HIS OR HER KNOWLEDGE. IF THE INSURER RELIES ON A REPRESENTATION IN ENTERING INTO THE INSURANCE CONTRACT AND IF IT PROVES TO BE FALSE AT THE TIME IT WAS MADE, THE INSURER MAY HAVE LEGAL GROUNDS TO VOID THE CONTRACT.
- **WARRANTY STATEMENT**
 - A STATEMENT OF FACT GIVEN TO AN INSURER BY THE INSURED CONCERNING THE INSURED RISK WHICH, IF UNTRUE, WILL VOID THE POLICY.



31

THE APPLICATION IS KEY

- **ADDITIONAL ITEMS TO INCLUDE WITH YOUR APPLICATION:**
 - BUSINESS BROCHURES
 - WEBSITE INFORMATION
 - RESUMES OF KEY INDIVIDUALS
 - COPIES OF CONTRACTS USED
 - PRIOR LOSS RUNS
 - ORIGINAL "WET" SIGNATURES ARE OFTEN REQUIRED
 - SOME REQUIRE FINANCIAL STATEMENTS, ANNUAL REPORTS, P & L



32

THE APPLICATION IS KEY

- **WHO NEEDS TO SIGN THE APPLICATION?**
 - MUST BE SIGNED BY AN OFFICER OF THE APPLICANT
 - COULD BE A PARTNER, PRINCIPAL OR OFFICER
 - MOST WILL ACCEPT ELECTRONIC SIGNATURES AND WILL TREAT THEM AS ORIGINALS
 - **NEVER** SIGN ON BEHALF OF THE INSURED – EVEN IF THEY HAVE GIVEN YOU WRITTEN PERMISSION




33

THE APPLICATION IS KEY

- CORRECT NAMED INSUREDS – PAST & CURRENT
- INCLUDE ALL SUBSIDIARIES FOR WHICH COVERAGE IS DESIRED
- A FULL DESCRIPTION OF THE INSURED'S OPERATIONS (MAKE CERTAIN YOU TOO HAVE REVIEWED THEIR BROCHURES & WEBSITES)
- MANY REQUIRE A PERCENTAGE BREAKDOWN OF THE INSURED'S OPS
- LIST OF THE INSURED'S LARGEST CLIENTS BY % OF REVENUES
- USE OF SUB-CONTRACTORS



34

THE APPLICATION IS KEY

- FUTURE EXPECTATIONS AND PLANS OF THE BUSINESS
- PROFESSIONAL/CONTINUING EDUCATION RECORDS
- PAST & CURRENT POLICY INFORMATION
- IS THE INSURED REQUIRED TO COMPLY WITH CERTAIN FEDERAL OR STATE CORPORATE GOVERNANCE RULES & REGULATIONS – HOW DO THEY VERIFY THAT COMPLIANCE
- ARE ALL OF THEIR LICENSES UP-TO-DATE AND PROVIDED



35

**APPLICATION – FINAL NOTICES
TRAVELERS**


- THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE APPLICANT DECLARES TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, AFTER REASONABLE INQUIRY, THE STATEMENTS SET FORTH IN THE ATTACHED TRAVELERS NEW BUSINESS OR RENEWAL APPLICATION FOR INSURANCE ARE TRUE AND COMPLETE AND MAY BE RELIED UPON BY TRAVELERS. IF THE INFORMATION IN ANY APPLICATION CHANGES PRIOR TO THE INCEPTION DATE OF THE POLICY, THE APPLICANT WILL NOTIFY THE COMPANY OF SUCH CHANGES, AND THE COMPANY MAY MODIFY OR WITHDRAW ANY OUTSTANDING QUOTATION. THE COMPANY IS AUTHORIZED TO MAKE INQUIRY IN CONNECTION WITH THIS APPLICATION.



36

APPLICATION – FINAL NOTICES ACE

- BY SIGNING THIS APPLICATION, THE APPLICANT WARRANTS TO THE COMPANY THAT ALL STATEMENTS MADE IN THIS APPLICATION AND ATTACHMENTS HERETO ABOUT THE APPLICANT AND ITS OPERATIONS ARE TRUE AND COMPLETE, AND THAT NO MATERIAL FACTS HAVE BEEN MISSTATED OR MISREPRESENTED IN THIS APPLICATION, SUPPRESSED OR CONCEALED. THE UNDERSIGNED AGREES THAT IF AFTER THE DATE OF THIS APPLICATION AND PRIOR TO THE EFFECTIVE DATE OF ANY POLICY BASED ON THIS APPLICATION, ANY OCCURRENCE, EVENT OR OTHER CIRCUMSTANCE SHOULD RENDER ANY OF THE INFORMATION CONTAINED IN THIS APPLICATION INACCURATE OR INCOMPLETE, THEN THE UNDERSIGNED SHALL NOTIFY THE COMPANY OF SUCH OCCURRENCE, EVENT OR CIRCUMSTANCE AND SHALL PROVIDE THE COMPANY WITH INFORMATION THAT WOULD COMPLETE, UPDATE OR CORRECT SUCH INFORMATION. ANY OUTSTANDING QUOTATIONS MAY BE MODIFIED OR WITHDRAWN AT THE SOLE DISCRETION OF THE COMPANY.



37

WHY PROFESSIONAL IS NEEDED


- EXCLUDED IN CGL AND/OR EXCLUDED IN BOP
- CGL
 - ENDORSEMENTS: CG 2443, CG 2279, CG 2280, AND MORE
- BOP
 - EXCLUDES "ANY PROFESSIONAL" SERVICE (B.1.J)
 - LISTS SOME NINE (9) SEPARATE EXPOSURES EXCLUDED...INCLUDING
 - LEGAL, ACCOUNTING, ADVERTISING, ENGINEERING, SUPERVISORY, INSPECTION; HEALTH OR THERAPEUTIC SERVICES; INSTRUCTION OR ADVICE; MEDICAL, DENTAL OR SURGICAL; PREPARING, APPROVING OR FAILING TO APPROVE MAPS, SURVEYS, DRAWINGS, OPINIONS, REPORTS, CHANGE ORDERS, SPECIFICATIONS; PERSONAL GROOMING; OPTOMETRY/OPTICAL OR HEARING AID SERVICES; BODY PIERCING; PHARMACY;



38

LIMITS OF LIABILITY

- PER CLAIM LIMITS
- AGGREGATE LIMITS
- SUBLIMITS:
 - DISCIPLINARY HEARINGS & PROCEEDINGS
 - PUNITIVE OR EXEMPLARY DAMAGES
 - DEFENSE
 - OTHERS DEPENDING UPON TYPE OF INSURED




39

COVERAGES PROVIDED

- VARY FROM CARRIER TO CARRIER
- PROFESSIONAL SERVICES AS DEFINED AND/OR DESCRIBED ON DECS
- LIMITS OF LIABILITY
- VARIOUS RETENTIONS/DEDUCTIBLES
- WRONGFUL ACTS AS DEFINED
- SOME MAY INCLUDE EPLI WITH A SEPARATE OR COMBINED LIMIT



40

OTHER CONSIDERATIONS

- DUTY TO DEFEND
- PUNITIVE DAMAGES
- INDEMNIFICATION VS. REIMBURSEMENT
- EMPLOYMENT PRACTICES
- OPTIONS TO REINSTATE LIMITS
- COPYRIGHT INFRINGEMENT OR OTHER INTELLECTUAL PROPERTY EXPOSURES
- INDEPENDENT CONTRACTORS
- RUN-OFF PROVISIONS
- PERSONAL INJURY
- SUBSIDIARIES
- DOMESTIC PARTNERS



41

TYPICAL EXCLUSIONS

CLAIMS FROM	CLAIMS FROM	CLAIMS FROM
DISCIPLINARY PROCEEDINGS EMPLOYMENT PRACTICES POLLUTION ACTS OCCURRING PRIOR TO THE POLICY PERIOD SECURITIES ACT, ERISA, RICO COMMINGLING OR FAILING TO SEPARATE FUNDS SEXUAL ABUSE OR MOLESTATION	MISUSE OR UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION BI/PD WHICH DOES NOT RESULT FROM THE PROF. SERVICES INSURED COPYRIGHT, PLAGIARISM, TRADEMARK, PATENT, SERVICE MARK INFRINGEMENTS CLAIMS BROUGHT ON BEHALF OF THE INSURED	PRICE FIXING, RESTRAINT OF TRADE, MONOPOLIZATION, ANTI-TRUST ACT VIOLATIONS LIABILITY ASSUMED IN CONTRACT UNLESS OTHERWISE LIABLE SOCIAL SECURITY, UNEMPLOYMENT, WORK COMP, DISABILITY OR RELATED OSHA, WARN, COBRA, NLRA, FLSA



42

CLAIMS EXAMPLES

- PROPERTY MANAGER FAILS TO MAKE REPAIRS
- PRINTER MISSES DEADLINE
- DELAYS IN CLAIMS PROCESSING
- BENEFICIARIES SUE ESTATE TRUSTEE




43

CLAIMS EXAMPLES

- INCOMPETENT TEMPORARY WORKERS
- IMPROPER COLLECTION SERVICES
- NEGLIGENT CONSULTING ADVICE
- MAILING ERROR




44

CLAIMS EXAMPLES

- MANAGEMENT CONSULTANT NEGLIGENT ADVICE
- COPYRIGHT INFRINGEMENT
- MISREPRESENTATION OF OPPORTUNITY TO A FRANCHISOR
- POOR PROMOTION OF AUCTION ACTIVITIES




45

CLAIMS EXAMPLES

- INTERIOR DESIGN LOSSES
- TECHNOLOGY RELATED CLAIMS
- NORTH COUNTIES ENGINEERING, INC. ET AL VS. STATE FARM GENERAL INSURANCE COMPANY. 224 CAL. APP. 4TH 902 (2014)




46

WHAT WE'VE COVERED TODAY

- WHAT IS PROFESSIONAL LIABILITY
- POLICY BASICS AND COMMONALITIES
- THE APPLICATION IS KEY
- SAMPLE POLICY COVERAGES AND ACTUAL LOSSES PAID
- TYPICAL EXCLUSIONS AND AREAS OF CONCERN




47

THANK YOU !



- CASEY ROBERTS, ACSR, AFIS, CIC
- (707) 477-0913
- LAURUS INSURANCE CONSULTING
- 328 CUPOLA COURT
- LINCOLN, CA. 95648
- CASEY@LAURUSINSURANCECONSULTING.COM



48
