PROFESSIONAL LIABILITY INSURANCE

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The Dangers of Late Notice under Professional Liability Policies

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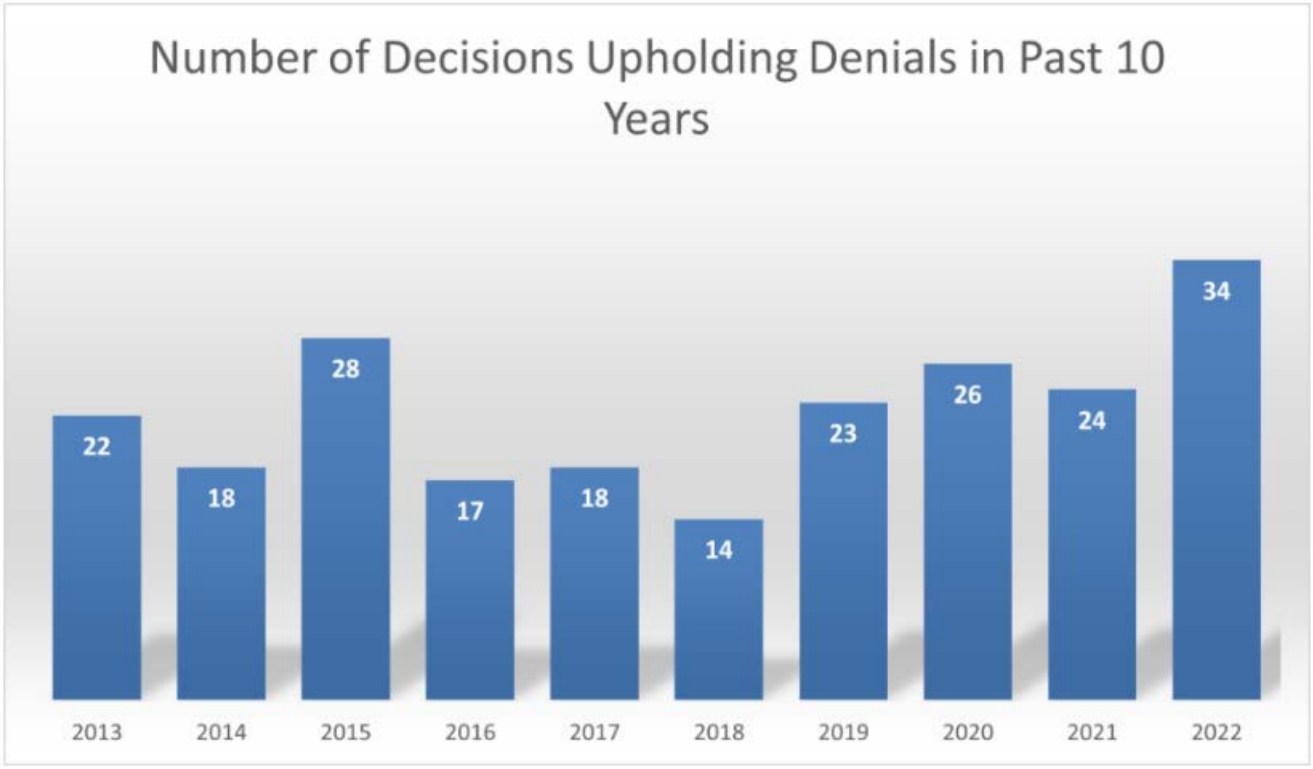
Claims-made insurance policies have been around for decades. Unfortunately, policyholders still seem unaware of how and when to report claims or potential claims. Numerous claims that might otherwise have been covered are needlessly denied. Nationwide, there are over 224 cases from the past 10 years where courts upheld claim denials based solely on failure to give proper notice. The trend of denials over the past decade shows no sign of slowing down.



This number likely represents just a small fraction of the notice-based denials that never make their way to a courtroom. More must be done to educate policyholders on how to comply with their policies' claims-made reporting requirements.

How did notice-based denials under claims-made forms become so common? To understand how the industry has arrived at this point, it is important to explore the history and evolution of the claims-made form.

There are six main reasons for these denials.

1. Late reporting of a claim after policy expiration

2. Failure to disclose known claims or potential facts and circumstances that could give rise to claims later on an application (and not reporting same under the notice of potential claim provisions)

3. Failure to identify that the current claim being reported is related to a prior claim reported to a previous insurer or previous policy with the same insurer

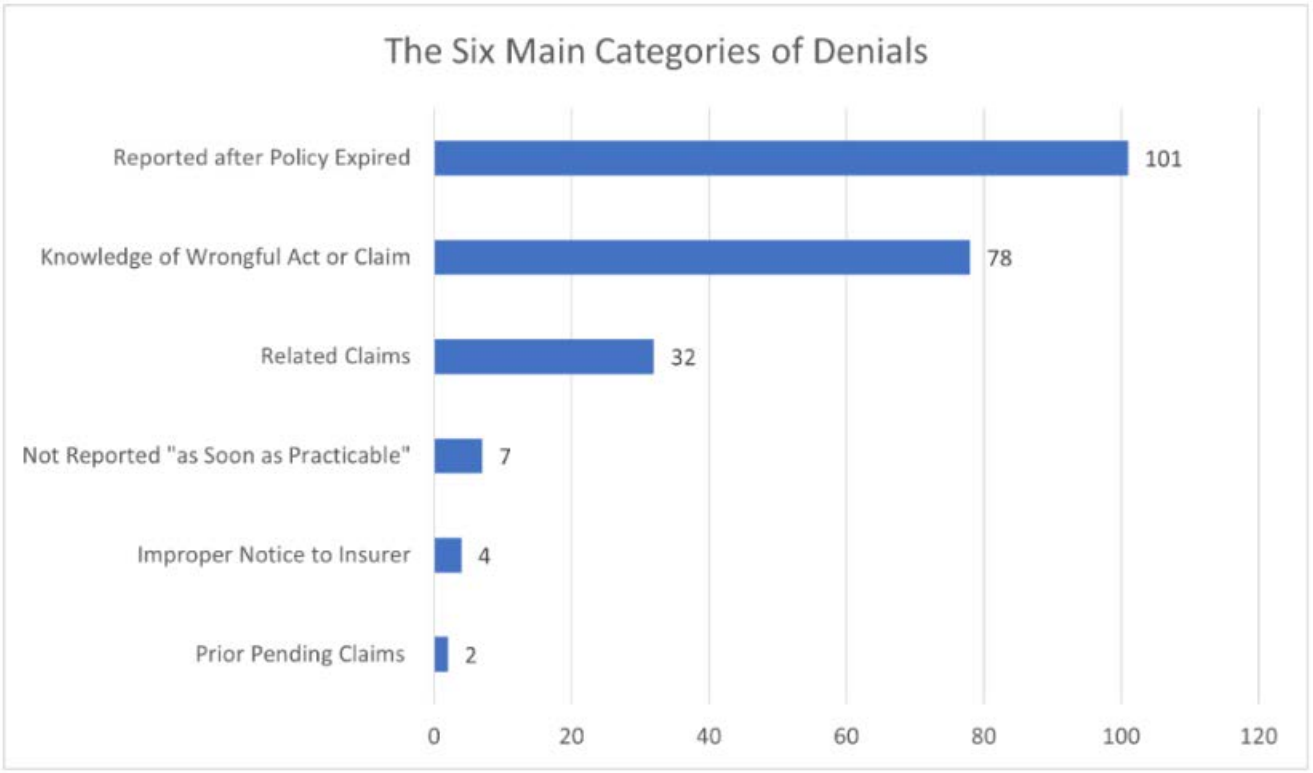
4. Failure to disclose prior-pending claims made on an insurance application

5. Reporting the claim in a manner that is not as directed by the policy language itself

6. Claims denied for not reporting "as soon as practicable"

The main driver of denials is that the policyholder reported the claim after the policy expired, as represented by 101 denials upheld by the courts. Not too far behind that category is the situation where the insured knew of a claim or wrongful act before the inception of a policy. Here is a breakdown of the six categories.

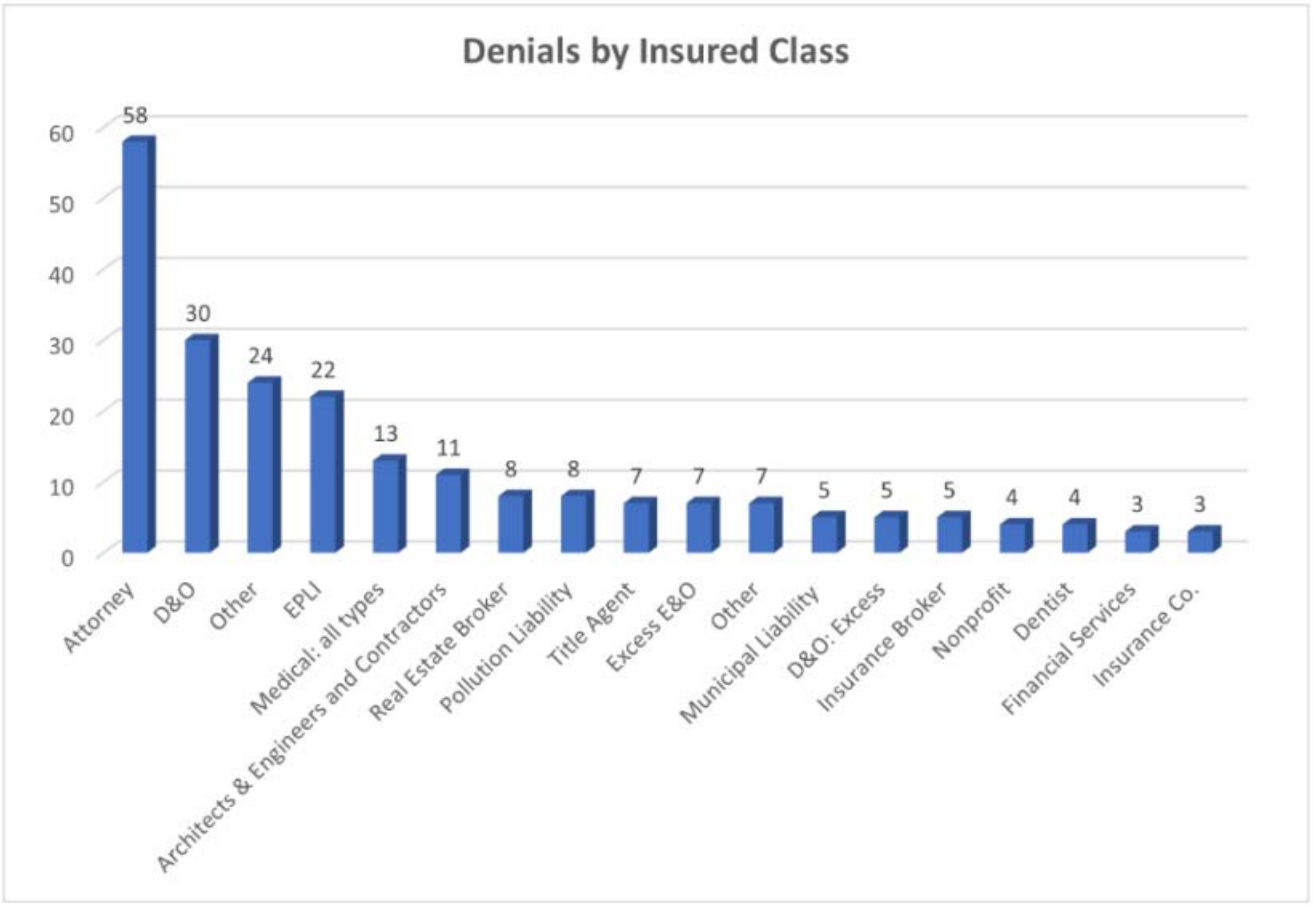
Read the compilation of the cases from across the nation powering these statistics.

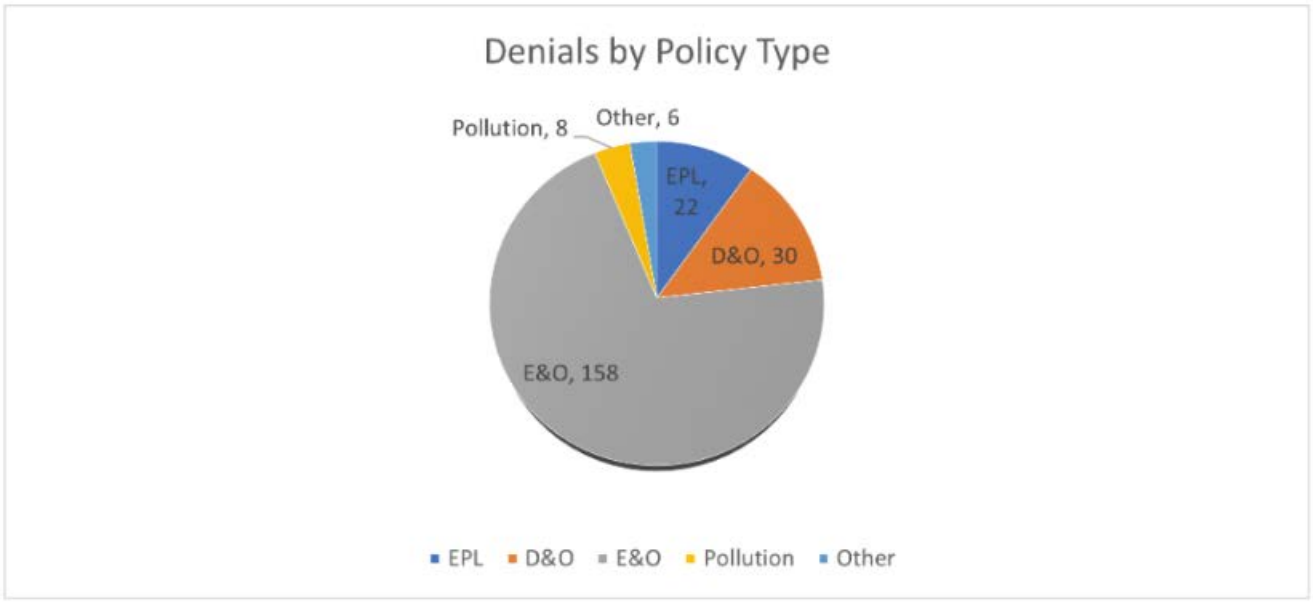


Equally telling are the types of insureds and policies giving rise to the most denials. For example, attorneys comprise 58 of the 224 cases where denials have been upheld—the most of any category. This is surprising, as attorneys are thought to be the profession least likely to overlook the policy's requirements. Of course, a deeper dive into these decisions shows that none of the denials involved malpractice committed by attorneys specializing in insurance coverage. Thus, the proviso of consulting with counsel on these issues continues—just make sure the attorney specializes in insurance coverage matters.

Given that many attorneys are struggling with the reporting function of claims-made policies, it is no surprise that the next largest category of denials upheld by courts is directors and officers (D&O) insurance, with 30 denials. Employment practices liability insurance (EPLI) follows closely with 22 denials. These two categories show some issues with companies and their corporate counsel being knowledgeable about the policies' reporting requirements. Interestingly, even insurance companies insured under claims-made policies get tripped up by these issues.

Errors and omissions (E&O) policies are the type of insurance with the most denials upheld in the past decade, with 158. Next is D&O insurance, with 30 denials upheld by courts, and EPLI insurance, with 22. This many denials across the professional lines spectrum indicates that policyholders are largely unaware of the unique challenges under policies containing claims-made reporting requirements. Here is a breakdown of these denials by policy type.





Although the policies are complex concerning notice, the steps necessary to avoid claim denials on this issue are not. Here is a checklist of tips that can be utilized.

- **Answer the application correctly.** When applying for or renewing coverage, make sure to disclose on the application any knowledge of a claim or knowledge of facts or circumstances that could become a claim later. Be sure to answer all application claim warranty questions with a "yes" when applicable.

- **Report the claims or potential claims.** Put your ego or embarrassment aside, and report all claims immediately.

- **Reporting the claim correctly.** Make sure to follow the policy's requirements when reporting to the insurer. Always report the matter as a "claim" or an incident that could become a "claim" later.

  —**Is it a potential claim?** If you think a claim might be made, use the incident reporting "safety net" and report the circumstances as required by one's specific policy.

  —**Am I trying to fix a mistake?** Policyholders attempting to cure a mistake should go ahead and report it to their insurer. For example, lawyers encountering a potentially blown statute of limitations are already aware of the facts or circumstances of a legal malpractice "claim." If the lawyer is unsuccessful in curing the issue, the lawyer likely expects that their former client will file a claim related to the malpractice. While finality might take years, finality or a final adjudication is not required for reporting a claim or an incident that could later become a "claim" arising from a professional error.

  —**Are there any related claims?** Moreover, any error or series of errors may give rise to many potential injured parties who may assert their rights at different times. The "related claims" provision may become critically important. For example, the current insurer may deny coverage on that basis, while the insurer handling the prior matter is ignored to the point it may become too late to timely report another related matter to them. If there is any possibility the

current matter is "related" to another claim made and submitted to any prior insurer, report the current matter to that insurer—even if it's the same or the current insurer. The prior policy and claim number needs to be referenced, given how courts use the exact policy language to make coverage determinations. Policyholders should be explicit in reporting these types of claims—for example, "This claim may be related to a previous claim submitted to you under a previous policy."

—**Consult with coverage counsel.** Given that courts now require exact compliance with clear and unambiguous policy provisions, it may be best to consult counsel to cover all the bases. Moreover, it is essential to hire an attorney specializing in insurance coverage matters.[1]

The History and the Unique Nature of Claims-Made Policies

The driving force in the evolution of claims-made policies is the fact that exposures involving professional liability insurance policies are unique. In 2009, *Insurance Journal* published a five-part series I authored that examined the unique natures of the exposures as well as a nearly 20-year trend to move from one claims-made triggering condition to as many as four triggering conditions.

Rarely are clients or customers immediately aware of the wrongful or erroneous actions of a "professional" service provider they trusted to perform specific duties or services; mainly because "professional" acts or errors do not or only seldom cause immediate injury. A professional's "wrongful acts" or errors may not manifest in client injury until long after the act is perpetrated or the error is committed (for instance, an estate issue or estate tax issue will often not be discovered until the testator dies). Occurrence policies are much different, in that an accident more often than not, gives rise to immediate injury such as running a red light and hitting another car.

Because of the time lag between the wrongful act or error and the resulting injury and the ultimate claim or lawsuit against the professional, those insurance professionals analyzing the issue deduced that there was a better way to insure a "professional." Secondarily, it was postulated that there had to be a way to provide greater actuarial certainty that there would be no further claim activity following the close of the policy period. This creative thinking led to the development of "claims made" policy wording. "Claims made" policies were designed around a simple idea, *to indemnify for claims first made against the insured during the policy period.*[2]

The development of claims-made policies to address these unique exposures began in the early 1970s.

The 1970s: The Claims-Made Form Comes into Prominence

Claims-made insurance policies have existed since at least 1964. One of the first significant developments occurred in 1972 when California Union Insurance Company (Cal Union)[3] entered into a managing underwriter agreement with Equity General Agents in Los Angeles,

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[1]The author wishes to express again his sincere appreciation to numerous law firms who, over the years, have diligently reported on such matters either on their websites or through aggregating services. I would also like to extend my appreciation to the monthly summaries published by Wiley Rein, LLP, Goldberg-Segalla, Tressler LLP, and aggregating services such as Lexology, Mondaq, JD supra, and the PLUS daily newsletter.

[2]*Insurance Journal* MyNewMarkets 5-part series (March 23, 2009–April 2, 2009). This article also focused on the evolution of claims-made "triggers" from one to as many as four required events. Not all were the result of the insured's actions.

California. This agreement was one of the first major programs to write professional liability on a claims-made basis on a national level.[4]

One problem with occurrence-based policies is that the policyholder's alleged error constitutes the "occurrence" date under the policy. Since a professional error might take years to give rise to any damages, policyholders would have to keep their policies available far into the future should a claim be made against them long after their occurrence-based policy had expired. This claims-made policy setup provided actuarial certainty.

The most common insuring agreement language found in the majority of policies from 1972 through the 1980s was similar to the language found in the Cal Union form.

> INSURING AGREEMENTS
>
> B. Coverage.
>
> To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages as a result of any claim made against the insured or any person, firm or corporation for whom the insured is legally liable, by reason of any act, error or omission in professional services rendered or which should have been rendered by the insured, his employees or by others for whom he is liable, in the conduct of the Insured's profession as an: Attorney….

The policy's third paragraph, "Certificate Period," further required that the "claim" would be covered if,

> (A) During the certificate period, or
>
> (B) Prior to the effective date of this insurance provided the insured had no knowledge of any claim or suit, or any act, error or omission which might result in a claim or suit, as of the date of signing the application for this insurance and there is no previous policy or policies under which the insured is entitled to indemnity for such claim or suit.

Unlike more modern forms to come, the word "claim" was undefined in the policy. Thus "claim" was usually judicially defined as a "demand for money or services."

Also, applications for coverage asked the following question as to whether

> [t]he Insured, (or any Insured, or after consulting with all Members of the Firm), is aware of any act, error or omission which might result in a claim or suit?

A "yes" answer would give rise to several obvious responses. As is often the case, the underwriter could do one of three things. The first would be to accept the application, ask for nothing further, and simply give a quote. Such is highly unlikely. The second and more likely option would be for the underwriter to issue an endorsement excluding coverage for any claim arising from the incident just disclosed on the application. Finally, the underwriter could elect to decline to write the account.

After this evolution, two significant developments took place in the 1980s.

The 1980s: Two Major Developments

The Defining of a "Claim"

The first development corrected the fact that most policies in the 1970s did not define the word "claim." By the late 1980s, policies

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[3]Cal Union was a subsidiary of the Insurance Company of North America (aka INA, acquired by ACE Insurance and now merged with Chubb).

[4]The next largest program in the mid-1970s was also a managing general agent driven by Lloyd's with Shand Morahan & Co., Inc. Markel ultimately acquired it. Shand Morahan had previously acquired and managed Evanston Insurance Company.

commonly defined the word "claim" in their policies. Here are just some of the many different definitions of "claim" utilized by insurers.

Claim means:

1. a written demand for monetary damages or non-monetary relief,
2. a civil or criminal adjudicatory proceeding or arbitration,
3. a formal administrative or regulatory adjudicatory proceeding, or
4. a formal civil, criminal, administrative or regulatory investigation, against an **Insured Person,** including any appeal therefrom.

Claim means:

1. a written demand or request for monetary damages or non-monetary relief against any of the

Insureds, or to toll or waive a statute of limitations;

1. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds,** including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by:
   a. the service of a complaint or similar pleading;
   b. the filing of a notice of charges, investigative order or similar document; or
   c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
2. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause; or
3. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with Underwriters' prior written consent, such consent not to be unreasonably withheld.

"Claim" means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. **"Claim"** shall also mean a threat or initiation of a suit seeking injunctive relief...."

Claim means a demand received by **you** for money or services, including the service of suit or institution of arbitration proceedings involving **you** arising from any alleged **wrongful act. Claim** shall also include any request to toll the statute of limitations relating to a potential **claim** involving an alleged **wrongful act**....

"Claim" means a written demand for monetary damages arising out of or resulting from the performing or failure to perform "Professional Services."

"Claim" means a demand for money or services naming the **Insured** arising out of an act or omission in the performance of **professional services.** A **claim** also includes the service of suit or the institution of an arbitration proceeding against the **Insured.**

"Claim" means: (1) a demand for money or services; or (2) a **suit** ...

The many differences in the definitions being used in the industry gave rise to other problems.

The Limiting of the Safety Net for Insureds

The second development in the 1980s enhanced the notice of claim provision via the development of the "incident reporting provision."[5] This change solved the important question—how can an insured still be protected if they know of an error that might later give rise to a claim, but no claim had been filed

[5]There are many additional "labels" for this provision, such as a "notice of potential claim provision." Also, note that not all policies contained a "safety net" built into the form; some required an endorsement, unlike today's policies.

during the policy period? Since that error would have to be disclosed on the policyholder's next application, the renewing or new insurer would decline to cover that claim should it later be made by adding a specific claim exclusion endorsement (or by declining the account).

The solution developed for a policyholder to obtain coverage when disclosing something that has not yet taken place is the incident reporting provision, which is found in the Cal Union policy. Under this important provision, the insured may report a matter that could *potentially* give rise to a claim at some later date and yet still be covered by the expired or expiring policy. The language used by Cal Union was,

> If, during the term of this certificate, the insured shall become aware of any occurrence which may subsequently result in a claim or suit and give notice thereof to the company, such claim or suit subsequently arising therefrom shall be covered under this certificate.[6]

The provision allows an insured, who may know of an error or potential claim that could be made against them later, to report that incident to an insurance company. If a claim would later be made against the insured, even after the policy expires, the policy would still respond because the potential claim was reported during that policy term.

Insurers tightened the incident reporting provision in the 1980s. Until that time, policyholders were submitting "laundry lists" of potential claims to insurance companies. Some insureds would submit every transaction or matter they handled that year. For example, a real estate broker might send a list of every transaction conducted that year as a potential claim. This was not deemed to be in "good faith" and drove the evolution of the provision.

Since the 1980s, to report a potential claim that may take place, most incident reporting provisions of policies required that several items be enumerated. For example, policyholders must state the nature of the error, the identity of the claimant(s), how much money may be at issue, and what would be the nature of the allegations against the insured. These requirements may vary between insurers but fortify the specific items that must be submitted with the notice of incident report to trigger the policy.

These additional requirements limit the ability of an insured to trigger the expiring policy and cover all potential matters they handled that year. Insurers found the more limiting approach to the incident reporting provision to be a success, as this limiting language appears consistently in modern policies to this very day.

It should be noted that one currently used policy has taken the requirements to an unusual and substandard extreme.

> The Company will determine, **in its sole discretion,** whether the NAMED INSURED's written notice satisfies the condition precedent above. [Emphasis added.]

This language is not by endorsement. Instead, it is built into the policy language itself. In the author's opinion, the clause is uniquely one-sided in favor of the insurer. It gives the insurer an advantage to deny that the conditions have been met simply when it decides that they have not been met. Such a decision could make a forthcoming renewal more difficult and expensive, whether with the same insurer or a new one.

By 1972,[7] the conditions section of one early form (instead of the insuring agreement like today's more modern forms) required claims to be reported during the policy term as well. Courts ruled that if the condition was violated, the insurer would have to show it was prejudiced

[6] Interestingly, the old provision lacks the required items mandated in today's more modern forms.

[7] See Cal Union Policy.

by the late reporting. The so-called notice-prejudice rule benefited policyholders greatly and became the standard for some time.

The 1980s and 1990s: Claims-Made and Reported Forms Find Their Footing in Courts

During the 1980s, many policyholders were not reporting their claims in a timely matter. Sometimes, they did not report their claims until after a trial when a verdict had been rendered. Other times, the insurance company that issued the policy "at risk" when the claim was first made may not have been on the risk at the time of trial. For example, the insured may have moved coverage to another insurer. Nonetheless, the notice prejudice rule still prevailed, and the insurance company would have to demonstrate evidence of prejudice to deny coverage. In some states, to show prejudice, the insurance company would be required to show that a different result might have occurred had they been notified in a timelier manner. This standard was a difficult burden for the insurer to establish, and many insurers did not bother.

Due to these late-reporting concerns, some insurers moved the reporting requirement from the condition section and included the reporting language as part of the insuring agreement. The language in the insuring agreement required that a claim "be first made against the insured" and that the claim must "be reported to the Company during the policy term." Thus, starting around 1981,[8] policies written on a claims-made and reported basis required that the claim be reported to the insurer (1) during the policy term or (2) during some short automatic reporting period of 30 to 60 days after the policy's expiration.[9]

One of the first policies to use this modified language was the Architects & Engineers Policy issued by Republic Insurance Group. However, it was not until American International Group (AIG) did the same on their professional liability programs later in the 1980s that most others followed.

Courts found that these policy changes mattered, further strengthening this trend. The courts tested the reporting requirement in the late 1980s and the 1990s. These courts, including California courts, generally ruled that the reporting requirement was enforceable because the claim reporting requirement was moved from the conditions section and became part of the insuring agreement. Thus, for coverage to exist, the claim must be first made against the policy term *and be reported to the company during the policy term* to trigger the policy.

Significantly, the insertion of the reporting requirement in the insuring agreement had another important impact—the demise of the notice prejudice rule in a majority of states by 2020 as to claims-made and reported policies. Although courts zealously apply this rule to protect policyholders when occurrence-based policies are at issue, it is found inapplicable in most states when claims-made and reported policies are at issue.

Some claims-made policies still do not contain the reporting requirement in the insuring agreement. This begs the question of whether the notice-prejudice rule would still apply given how so many decisions ruled otherwise, often referencing the claims-made and reporting requirements in the decisions themselves.[10] A recent California federal court decision grappled with this exact issue. It ruled that the notice-prejudice rule still applies when the reporting requirement is not contained in the insuring agreement. *Triyar Hosp. Mgmt.*

[8] See Republic Insurance Co Policy, the earliest policy I have located with this language.

[9] Not all policies provided an automatic extended reporting period. Some policies, like today, only did so when the policy was canceled or nonrenewed, usually bilaterally. These problems have been discussed in my other IRMI article, "Possible Dangers Lurking in Claims-Made Policies," a four-part series published in Expert Commentary March–April 2019.

[10] *See Financial Indus. Regulatory Auth. v. AXIS Ins. Co.,* No. 12-cv-1053 (D. Md. June 12, 2013). The case examines the problem and the consequences of the "as soon as practicable" language.

LLC v. QBE Specialty Ins. Co., 2023 U.S. Dist. LEXIS 38883 (C.D. Cal Jan. 17, 2023).

Another aspect of this trend was the introduction of another condition requiring that the "Insured must report all Claims or Lawsuits as soon as practicable." The phrase "as soon as practicable" was interpreted as being "as soon as possible and without any excusable delay." Thus, an underlying lawsuit served on the insured within a month of the policy inception, yet not reported to the insurer until 8 months later, might be deemed a late report if there was no reasonable basis for waiting 8 months. Some courts have upheld a claim denial even though the claim was reported during the policy term.[11]

The 1990s and into the Millennium: The Fiction of "Continuity of Coverage"

During the mid-late 1990s and into the millennium, some underwriters advised that insureds should *not* answer any warranty questions on renewal applications regarding having knowledge of potential claims. While this was more likely to occur with the incumbent insurer, some insurers seeking to write "new" business utilized the same strategy to take a renewal away from another insurer. As to why some underwriters did not want warranty questions answered, the response was invariably that they did not want to "break the chain of continuity"—a concept they could not clearly define.

This "continuity" concept supposedly allowed an insurer to accept a claim in a renewal year, even though the insured knew that a potential claim was brewing. This concept included matters under internal review as to exposure or possible rectification of a problem. The potential benefits to the insurer are two-fold. It allows the insurer to maintain its relationship with the insured. Moreover, it avoids the scenario of the insured using the potential claim reporting provision while at the same time renewing with another insurer.

However, there is a major problem with this "continuity" concept utilized by some underwriters. The claims department is not on board. In the past decade, I located 18 claim denials upheld by courts with this exact scenario—that is, where the insured may have known about a claim or potential claim in the policy year preceding the one in which the claim was first reported. This is a classic example of an underwriter taking one position and informing the insured's broker of their position. However, in the subsequent months or years when a claim actually develops, the claims department takes an entirely different position based on the terms of the policy.

Significantly, the policy language provides little help in defining this concept of "continuity." Policies at that time and even today defined the "continuity date" as simply the date specified in item "x" on the declaration page. There was no further definition.[12] Further, policies generally contained an exclusion for any claim that was "prior or pending" as of the date specified in item X of the declaration page—that is, the continuity date (aka prior-pending claim or litigation date). Significantly, no policies contain language providing coverage under the initial policy where the insured became aware of a potential claim and where the insured later became

[11] *See Food Mkt. Merch., Inc. v. Scottsdale Indem. Co.,* 857 F.3d 783 (8th Cir. 2017), and *Indian Harbor Ins. Co. v. The City of San Diego,* 586 F. Appx. 726 (2d Cir. 2014).

[12] It has been 20 years since I was a moderator and speaker at a PLUS Symposium on nonmedical professional liability (i.e., errors and omissions coverage). Joining me was the then senior vice president of underwriting at Tudor Insurance Company and a prominent partner of a well-known defense firm. There were also about 220 people in the audience that day, all of whom had a separate definition of what was meant by "continuity of coverage." No one could define the term. Further, many claims professionals believed each policy had its own "claims first made boundaries" even when renewing with the same insurer. This belief persists to this day and is followed by the courts.

aware of a "real" claim during a different successive policy year.

Even without a policy definition of "continuity," some senior underwriters continue to believe the continuity concept still exists.[13] Some underwriters have even suggested in court that, had the insured renewed with them, the claim they are now denying would have been covered. However, if the insured was already aware of the potential claim and signed a warranty that they were unaware of same, that would certainly be a misrepresentation.

Interestingly, I have witnessed an insurance company take the exact opposite position in another case. Specifically, the insured was aware of the facts or circumstances of a claim in the prior policy term, and they did renew with the same insurer. That claim was denied as not covered under the renewing policy because the insured allegedly was not honest on the application. In my opinion, this is an inconsistent position. This example furthers the concept of "continuity" being unsupportable.

Therefore, it is my opinion that the continuity concept does not exist and has never been defined. A policyholder should not rely on the oral representations of an underwriter when the claim department is not part of that communication. The number of cases upholding a denial under these circumstances makes that abundantly clear. Broker beware, indeed.

The 2020s: Claims-Made Trigger Denials Continue at a Brisk Pace

Despite this evolution of claims-made forms, these notice provisions remain the standard in the specialty and professional lines industry. Yet, over the past 10 years, about 224 claim denials have been upheld for claims that were known but not reported for any justifiable reason, were not disclosed on an application, or were related to a prior claim and not reported under that policy, or the insured failed to invoke the incident reporting provision. This number is rather unbelievable, as it demonstrates that policyholders largely ignore the important safety net provision in every claims-made policy that has existed since at least 1972.[14]

Surprisingly, **58** of these cases involved insureds who were lawyers. One would think a lawyer would know better since they are familiar with the concepts of contract law. The next largest group is directors and officers, with **26** cases where a court upheld the denial. These upheld denials include a recent decision where Harvard failed to notify its excess directors and officers insurer.[15] Even a large risk department at one of the nation's top universities is not immune from the perils of claims-made notice requirements.

This large number of claim denials demonstrates that there is a problem. Many policyholders are shocked to find their claim denied and even more shocked that courts will uphold this denial. This is not the intended outcome when purchasing insurance. Policyholders purchase insurance to place them back into the financial position they were in before the loss, only to find they are now on their own.

A major problem demonstrated by these cases is that many policyholders seem to think that a "claim" is only a lawsuit that has been served. That is not necessarily true. A definition of a "claim" exists in almost every claims-made insurance policy issued today.[16]

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[13] The first case I know of supporting the rejection of this concept is *Executive Risk Indem., Inc. v. Chartered Benefit Servs., Inc.,* 2005 U.S. Dist. LEXIS 15411 (N.D. Ill. July 29, 2005). The other 18 cases where "continuity" issues might exist still resulted in denials in favor of the insurer without ever mentioning "continuity."

[14] See Cal Union policy.

[15] *President & Fellows of Harvard Coll. v. Zurich Am. Ins. Co.,* No. 21-cv-11530, 2022 U.S. Dist. LEXIS 199326 (D. Mass. Nov. 2, 2022)

[16] This was not always true. Now, many different definitions exist.

Illustrative Cases: The Six Categories of Claim Denials

Six categories trip up policyholders relating to providing notice. Here are denials upheld by courts from across the nation in each of these categories.

1. Denials upheld based on late reporting
2. Denials upheld where the insured had knowledge of a wrongful act that could give rise to a claim
3. Denials upheld based on related claims
4. Denials upheld based on prior pending claims
5. Denials upheld for reporting the claim to the wrong person or address
6. Denials upheld for not reporting a claim "as soon as practicable"

Denials Upheld Based on Late Reporting

Over 100 cases upheld claim denials for late reporting. Many of these cases demonstrate that, all too often, insureds are aware that a claim has been made against them. Policyholders often misinterpreted the definition of a "claim" under the policy. Sometimes, they have their own ideas about what constitutes a "claim."

Also, numerous cases involve claims where the insured failed to report it to the company in the time prescribed, sometimes waiting long after the policy expired before they told the insurance company about it. Perhaps these insureds thought the notice prejudice rule might still apply to claims-made coverages. However, the notice prejudice rule is all but dead in most states. Here are the 101 cases.

Case	Coverage Type	State	Facts
HB Dev., LLC v. Western Pac. Mut. Ins., 86 F. Supp. 3d 1164 (E.D. Wash. 2015)	Commercial general liability (CGL): claims-made	WA	Insured contractor did not provide notice of a construction defect claim until over a year after the policy expired.
Topp's Mech., Inc. v. Kinsale Ins. Co., 968 F.3d 854 (8th Cir. 2020)	CGL: time element pollution end.	NE	The insured reported the pollution incident too late, and the court rejected waiver and estoppel arguments made by the insured.
QES Pressure Control, LLC v. Zurich Am. Ins. Co., No. 4:20-CV-3661, 2022 U.S. Dist. LEXIS 58513 (S.D. Tex. Mar. 29, 2022)	CGL: time element pollution end.	TX	Insured failed to report the pollution incident within 90 days as required by the policy.
Philadelphia Indem. Ins. Co. v. Lewis Produce Mkt No. 2, 2022 U.S. Dist. LEXIS 64688 (N.D. Ill. Apr. 7, 2022).	Cyber: professional errors and omissions (E&O)	IL	Suit was filed the day before the policy expired, but the insured was not served and did not have actual knowledge of the suit until 6 days after the policy expired.
C.A. Jones Mgmt. Grp., LLC v. Scottsdale Indem. Co., No. 5:13-CV-00173, 2015 U.S. Dist. LEXIS 37575 (W.D. Ky. Mar. 25, 2015)	Directors and officers (D&O)	KY	Insured reported a suit filed against it during the successor policy and not during the initial policy period.

Case	Coverage Type	State	Facts
Craft v. Philadelphia Indem. Ins. Co., 2015 CO 11, 343 P.3d 951 (Feb. 17, 2015)	D&O	CO	The insured reported a lawsuit filed against it nearly 16 months after the policy expired.
Faithlife Corp. v. Philadelphia Indem. Ins. Co., No. C18-1679RSL, 2020 U.S. Dist. LEXIS 236797 (W.D. Wash. Dec. 16, 2020)	D&O	WA	The insured knew of notices by Equal Employment Opportunity Commission (EEOC) and by employees during the policy period.
ISCO Indus. v. Great Am. Ins. Co., 2019-Ohio-4852, 148 N.E.3d 1279 (Ohio App. Nov. 27, 2019)	D&O	OH	Insured failed to report suit during the initial policy period and reported it late during the renewal policy.
Philadelphia Indem. Ins. Co. v. Great Plains Annual Conference of the United Methodist Church, 2022 U.S. Dist. LEXIS 31076 (D. Kan. Feb. 22, 2022)	D&O	KS	Ruling that the prejudice rule did not apply and the law firm failed to provide notice during the initial policy when it entered into a tolling agreement.
Supima v. Philadelphia Indem. Ins. Co., 2021 U.S. Dist. LEXIS 112964 (D. Ariz. June 16, 2021)	D&O	AZ	Insured failed to report arbitration demand during the policy period.
XL Specialty Ins. Co. v. Bollinger Shipyards, Inc., No. 12–2071, 2015 U.S. Dist. LEXIS 23633 (E.D. La. Feb. 26, 2015)	D&O	LA	Insured did not provide notice of demands to preserve evidence and the tolling agreement until after the policies expired.
Zurich Am. Ins. Co. v. UIP Cos. LLC, 2021 U.S. Dist. LEXIS 28115 (D.D.C. Feb. 16, 2021)	D&O	DC	Insured failed to report demand sent via email during the policy period.
Crowley Mar. Corp. v. National Union Fire Ins. Co., 931 F.3d 1112 (11th Cir. 2019)	D&O	FL	Insurer did not owe $2.5 million in pretender defense costs incurred by the insured because the claim was not timely reported.
First Horizon Nat'l Corp. v. Houston Cas. Co., No. 15-cv-2235, 2017 U.S. Dist. LEXIS 109935 (W.D. Tenn. June 23, 2017)	D&O	TN	A settlement offer by the Department of Justice constituted a claim, and the insured failed to report to the insurer for nearly 10 months.
US HF Cellular Commc'ns, LLC v. Scottsdale Ins. Co., 776 F. App'x 275 (6th Cir. May 31, 2019)	D&O	CA	Insured failed to timely report a lawsuit against it during the applicable policy period, which barred coverage. The court also found no coverage under the subsequent policy due to the insured's failure to report the lawsuit.

Case	Coverage Type	State	Facts
Citrus Course Homeowners Ass'n v. Great Am. Ins. Co., 2016 U.S. Dist. LEXIS 10199 (C.D. Cal. Jan. 7, 2016)	D&O	CA	Homeowners' association did not report a lawsuit against it for nearly 7 months.
Zahoruiko v. Federal Ins. Co., 717 F. App'x 50 (2d Cir. 2018)	D&O	CT	Insured failed to notify its insurer until 1.5 years after the lawsuit was commenced and 15 months after the default.
Ashland Hosp. Corp. v. RLI Ins. Co., 2015 U.S. Dist. LEXIS 33775 (E.D. Ky. Mar. 17, 2015)	D&O: excess	KY	Late reporting of claim timely made to primary but not the excess insurer.
Jordan v. Evanston Ins. Co., 23 F.4th 555 (5th Cir. Jan. 17, 2022)	D&O: excess	MS	Even though the insurer knew about the incident due to media statements, the court ruled that this was not a notice of claim to the insurer.
Cox v. Liberty Ins. Underwriters, Inc., 773 F. App'x 931 (9th Cir. July 19, 2019)	E&O: accountant	OR	Although the insured reported to the insurer some information about a client for which it performed accounting services during the policy period, it did not constitute proper notice of a claim under the policy.
PAMC, Ltd. v. National Union Fire Ins. Co. of Pittsburgh, PA, No. 2:18-cv-06001, 2019 U.S. Dist. LEXIS 28538 (C.D. Cal. Feb. 12, 2019)	E&O: allied med.	CA	The insured filed a waiver of service of a whistleblower action and was served with a subpoena during the policy period but did not report these incidents until after the policy expired.
Anderson v. Aul, 2015 WI 19, 361 Wis. 2d 63, 862 N.W.2d 304 (Feb. 25, 2015)	E&O: attorney	WI	A demand letter sent to the insured was not reported to the insurer for almost a year.
Hanover Ins. Grp. v. Aspen Am. Ins. Comay, No. CV 20-56, 2021 U.S. Dist. LEXIS 161032 (D. Mont. Aug. 25, 2021)	E&O: attorney	MT	Insured firm did not report its failure to file Uniform Commercial Code paperwork for a client during the relevant policy period.
Illinois State Bar Ass'n Mut. Ins. Co. v. Beeler Law, P.C., 2015 IL App (1st) 140790-U (Mar. 25, 2015)	E&O: attorney	IL	The insured gave notice with little details of potential claims right before the policy's expiration.
Minnesota Lawyers Mut. Ins. Co. v. Baylor & Jackson, PLLC, 531 F. App'x 312 (4th Cir. 2013)	E&O: attorney	MD	Law firm failed to report the claim during the 2006 policy period. Instead, it reported the claim late under the subsequent policy.

Case	Coverage Type	State	Facts
Petersen v. Arch Ins. Co., No. 5:15-cv-00832, 2015 U.S. Dist. LEXIS 85183 (C.D. Cal. June 30, 2015)	E&O: attorney	CA	Law firm did not provide notice to its insurer of the lawsuit filed against it years prior.
Vela Wood PC v. Associated Indus. Ins. Co., 485 F. Supp. 3d 704 (N.D. Tex. Sept. 10, 2020)	E&O: attorney	TX	Insured failed to report a lawsuit during the initial policy. Instead, it reported the suit during the renewal policy.
Alps Prop. & Cas. Ins. Co. v. Unsworth Laplante Pllc, 526 F. Supp. 3d 23 (D. Vt. 2021)	E&O: attorney	VT	Law firm failed to transfer the title to trust and received client complaints. However, the firm did not report the claim for about 3 years.
Shad's Inc. v. Key, No. CIV-17-1031, 2019 U.S. Dist. LEXIS 114105 (W.D. Okla. July 10, 2019)	E&O: attorney	OK	Attorney did not provide notice of a claim against it until the policy expired. The court declined to find that a timely reported claim was related to the untimely claim.
Sheffield v. Darwin Nat'l Assurance Co., 2017 WI App 56 (Wis. July 25, 2017)	E&O: attorney	WI	Law firm did not report malpractice claims within the insurance policy's 2-year extended reported period (ERP).
Ironshore Specialty Ins. Co. v. Callister, No. 2:15-cv-00677, 2017 U.S. Dist. LEXIS 210973 (D. Utah Dec. 21, 2017)	E&O: attorney	UT	The court rejected that the insured complied with the notice provision in the policy by informing the insurer about the claim in a renewal application.
James River Ins. Co. v. Brick House Title, LLC, 2017 U.S. Dist. LEXIS 183225 (D. Md. Nov. 6, 2017)	E&O: attorney	MD	Although aware of a potential claim, the law firm did not provide notice under the first policy. Instead, it provided notice under the renewal policy. The court held coverage was not owed under either policy.
Weeks & Irvine LLC v. Associated Indus. Ins. Co., 433 F. Supp. 3d 791 (D.S.C. Jan. 6, 2020)	E&O: attorney	SC	Even though the client brought up an issue with the law firm's work, it failed to report the potential claim to the insurer during the original policy period.
McCarty v. National Union Fire Ins. Co., 699 F. App'x 464 (6th Cir. 2017)	E&O: attorney	OH	A law firm waited months to report a legal malpractice lawsuit after its policy expired.
First Am. Title Ins. Co. v. Continental Cas. Co., 709 F.3d 1170 (5th Cir. 2013)	E&O: attorney	LA	Although a lawsuit was filed against the insured during the policy period, the insured failed to report the suit until after the policy's expiration.
Reifer v. Westport Ins. Co., 134 A.3d 500 (Pa. Super. Ct. 2015)	E&O: attorney	PA	A law firm was served with a writ of summons. However, it failed to report the incident to its insurer until after the policy expired.

Case	Coverage Type	State	Facts
Bowman, Heintz, Boscia & Vician, P.C. v. Valiant Ins. Co., 35 F. Supp. 3d 1015 (N.D. Ind. 2014)	E&O: attorney	IN	A law firm received a threat of litigation from its client due to alleged malpractice. However, it failed to report the incident to its insurer for 9 months.
Southwest Disabilities Servs. & Support v. ProAssurance Specialty Ins. Co., 2018 IL App (1st) 171670 (July 27, 2018)	E&O: care facility	IL	The insured failed to report a potential claim related to an incident involving a sick patient to its insurer.
Alaska Interstate Constr., LLC v. Crum & Forster Specialty Ins. Co., 696 F. App'x 304 (9th Cir. 2017)	E&O: contractor	AK	Insured failed to report a demand letter during the initial policy period.
Catlin Specialty Ins. Co. v. American Superconductor Corp., 32 Mass. L. Rep. 93 (Jan. 29, 2014)	E&O: contractor	MA	The insured knew of a potential claim during the initial policy period via the termination of a license agreement due to technical problems with the insured's wind turbine. The letter warned that, unless an "amicable resolution [wa]s reached," a claim for the losses would be pursued against the insured. However, the insured did not report the letter until after the policy was renewed.
Gateway Residences at Exch., LLC v. Illinois Union Ins. Co., 917 F.3d 269 (4th Cir. Feb. 28, 2019)	E&O: contractor	VA	Contractor failed to provide notice of a potential claim against it relating to a generator catching fire that delayed the building's opening.
National Union Fire Ins. Co. of Pittsburgh v. Estate of Calendine, 2022 U.S. Dist. LEXIS 147427 (D. Colo. Aug. 17, 2022)	E&O: dental	CO	The insured failed to provide any notice of lawsuits against it alleging negligent care during the policy period.
Admiral Ins. Co. v. Banasiak, 72 N.E.3d 491 (Ind. App. Mar. 16, 2017)	E&O: doctor	IN	The doctor waited about 2 years after the policy expired to notify the insurer of a demand letter from a patient.
Wright State Physicians, Inc. v. Doctors Co., 2016-Ohio-8367, 78 N.E.3d 284 (OH App. Dec. 23, 2016)	E&O: doctor	OH	Insured failed to provide notice of a potential suit before the policy's expiration.
President & Fellows of Harvard Coll. v. Zurich Am. Ins. Co., No. 21-cv-11530, 2022 U.S. Dist. LEXIS 199326 (D. Mass. Nov. 2, 2022)	E&O: excess	MA	Harvard failed to report a lawsuit filed against it to its excess insurer during the policy period.

Case	Coverage Type	State	Facts
Heritage Bank of Commerce v. Zurich Am. Ins. Co., No. 21-cv-10086, 2022 U.S. Dist. LEXIS 150720 (N.D. Cal. Aug. 17, 2022)	E&O: excess	CA	Notice to underwriter during renewal process held insufficient to constitute proper notice to the insurer.
NetSpend Corp. v. Axis Ins. Co., 2014 U.S. Dist. LEXIS 97656 (W.D. Tex. July 18, 2014)	E&O: financial services	TX	Insured failed to report a lawsuit against it until the applicable policy expired.
St. Paul Mercury Ins. Co. v. Hershare Fin. Corp., 191 F. Supp. 3d 889 (N.D. Ill. 2016)	E&O: financial services	IL	A letter sent to the insured stating it was subject to a consent decree and other regulatory actions did not qualify as notice under the policy of a lawsuit subsequently filed against the insured years later.
Hunt Constr. Grp., Inc. v. Berkley Assurance Co., No. 19-CV-8775, 2021 U.S. Dist. LEXIS 183350 (S.D.N.Y. Sep. 24, 2021)	E&O: general contractor	NY	Insured did not report notice of a potential claim made in a letter during the initial policy period.
S.M. Elec. Co. v. Torcon, Inc., No. A-0846-15T3, 2016 N.J. Super. Unpub. LEXIS 2289 (Super. Ct. App. Div. Oct. 19, 2016)	E&O: general contractor	NJ	The insured received notice of a potential claim against it in a letter from a client. However, the insured failed to report the letter to its insurer until a year later when a lawsuit was filed.
Certain Underwriters at Lloyds London Subscribing to Policy No.PGIARK01449-05 v. Advance Transit Co., Inc., 188 A.D.3d 523, 132 N.Y.S.3d 621 (NY App. Nov. 17, 2020)	E&O: government officials	NY	A suit was filed against the insured but not reported to its insurer until after the policy expired.
Inn-One Home v. Colony Specialty Ins. Co., 521 F. Supp. 3d 495 (D. Vt. Feb. 23, 2021)	E&O: health care	VT	An incident involving a patient incurred in the first policy, but the insured did not report it until the second policy.
Hill v. PCH Mut. Ins. Co., No. 1:17-CV-4955, 2018 U.S. Dist. LEXIS 223194 (N.D. Ga. Nov. 19, 2018)	E&O: health care	GA	The insured reported a lawsuit against it after the policy was canceled.
Aix Specialty Ins. Co. v. Diamond, No. 5:19-cv-403, 2020 U.S. Dist. LEXIS 191002 (M.D. Fla. Aug. 31, 2020)	E&O: health care	FL	A healthcare provider insured did not provide notice of a suit filed against it until after the policy expired.

Case	Coverage Type	State	Facts
Homeland Ins. Co. v. Devereux Found., 505 F. Supp. 3d 508 (E.D. Pa. Dec. 7, 2020)	E&O: health care	PA	Insured facility failed to report a writ of summons filed against it by a patient until after the policy expired.
Republic Franklin Ins. Co. v. Ficke & Assocs., 2022 N.J. Super. Unpub. LEXIS 1802 (NJ Super. Sep. 30, 2022)	E&O: insurance broker	NJ	The insured reported the claim 3 years late to the insurer. Also, it was reported after a default judgment had been entered against the insured.
James River Ins. Co. v. TimCal, Inc., 2017 IL App (1st) 162116 (June 20, 2017)	E&O: insurance broker	IL	Although the insured forwarded the claim to its broker, the broker failed to report the claim to the insurer.
Windhaven Managers, Inc. v. Chartis Specialty Ins. Co. (AIG Specialty Ins. Co.), 2014 U.S. Dist. LEXIS 164411 (M.D. Fla. Nov. 24, 2014)	E&O: insurance	FL	Insurance company failed to report a civil remedy notice for bad faith filed against it during the professional liability insurer's policy period.
Consumers Ins. USA, Inc. v. James River Ins. Co., 2014 U.S. Dist. LEXIS 4707 (W.D. Mo. Jan. 14, 2014)	E&O: insurance	MO	An insurance company sued for bad faith did not report the suit to its insurer until 7 months after the policy expired.
Sistrunk v. Haddox, No. 18–516, 2021 U.S. Dist. LEXIS 83597 (W.D. La. Apr. 30, 2021)	E&O: investment adviser	LA	The insured failed to report the claim until nearly 3 years after the policy expired.
Aspen Square, Inc. v. American Auto. Ins. Co., No. 2:18-CV-02255, 2019 U.S. Dist. LEXIS 38364 (D. Kan. Mar. 11, 2019)	E&O: land surveyor	KS	The insured land surveyor failed to provide notice of claim to the insurer during the policy period.
Burris v. Gulf Underwriters Ins. Co., 787 F.3d 875 (8th Cir. 2015)	E&O: manufacturer	MN	Despite the insured claiming that its attorney provided notice of a claim during the policy period, a jury ruled that the attorney never sent notice.
Capitol Specialty Ins. Corp. v. Big Sky Diagnostic Imaging, Inc., 845 F. App'x 618 (9th Cir. 2021)	E&O: med. mal.	MT	The insured failed to report a Montana Medical Legal Panel Application Reported during the policy period.
Gorman v. City of Opelousas, 148 So. 3d 888 (La. July 1, 2014)	E&O: municipal liability	LA	A lawsuit was filed against the insured in an earlier policy year. However, the insured did not report it until the policy was renewed.

Case	Coverage Type	State	Facts
EurAuPair Int'l, Inc. v. Ironshore Specialty Ins. Co., 787 F. App'x 469 (9th Cir. 2019)	E&O: not for profit	CA	The insured was sued during the inception of the first policy. However, it failed to report the lawsuit until the second policy came into effect.
Nahant Pres. Tr., Inc. v. Mount Vernon Fire Ins. Co., No. 22–10486, 2022 U.S. Dist. LEXIS 229249 (D. Mass. Nov. 7, 2022)	E&O: not for profit	MA	A university failed to report a lawsuit against it for over a year, which was after the expiration of its policy.
Maxum Indem. Co. v. Colliers Int'l Atlanta, LLC, 861 F. App'x 279 (11th Cir. 2021)	E&O: real estate	GA	An insured that received a letter advising of a potential lawsuit failed to report it to its insurer during the policy period.
Sunshine v. Gen. Star Nat'l Ins. Co., No. 1:15-cv-01374, 2016 U.S. Dist. LEXIS 131213 (S.D. Ind. Sep. 26, 2016)	E&O: real estate	IN	Although the insured performed appraisal during the policy period, it did not report a claim until after the expiration of multiple policies.
Sharp Realty & Mgmt., LLC v. Capitol Specialty Ins. Corp., 503 F. App'x 704 (11th Cir. 2013)	E&O: real estate	AL	Insured waited more than 8 months to notify its insurer of a lawsuit against it. The notice came after the policy expired. Regarding the subsequent policy, the court found that the claim related back to an earlier action that preceded the policy period.
PCCP LLC v. Endurance Am. Specialty Ins. Co., No. 12-CV-0447, 2013 U.S. Dist. LEXIS 114400 (N.D. Cal. Aug. 13, 2013)	E&O: real estate	CA	Insured sued during the policy period but failed to submit the claim until months after the policy expired.
Schleusner v. Continental Cas. Co., 102 F. Supp. 3d 1148 (D. Mont. 2015)	E&O: real estate	MT	A lawsuit against the insured was not reported during the policy period to the insurer. The claim did not trigger coverage even though it was reported during the ERP.
Evanston Ins. Co. v. Cheetah, Inc., No. 7:15-CV-082, 2016 U.S. Dist. LEXIS 114589 (S.D. Tex. Aug. 26, 2016)	E&O: rehabilitation	TX	Although the insured claimed its broker provided notice of the claim during the policy period, the court ruled that there was no evidence that the broker ever sent the notice to the insurer during the policy period.
Philadelphia Consol. Holding Corp. v. LSi-Lowery Sys., 775 F.3d 1072 (8th Cir. 2015)	E&O: tech	MO	Law firm received complaints from the client's lawyers threatening to sue. However, it failed to report the complaints during the initial policy period.

Case	Coverage Type	State	Facts
Citizens Ins. Co. of Am. v. Assessment Sys. Corp., No. 18-CV-01762, 2019 U.S. Dist. LEXIS 145082 (D. Minn. Aug. 26, 2019)	E&O: tech	MN	The insured did not report a counterclaim against it to the insurer for about a year.
Hartford Fire Ins. Co. v. iNetworks Servs., LLC, No. 18-cv-07693, 2020 U.S. Dist. LEXIS 53473 (N.D. Ill. Mar. 27, 2020)	E&O: tech	IL	A software company was aware of a compromised server during the policy period but failed to report it until after its policy expired.
University of Pittsburgh v. Lexington Ins. Co., No. 13-cv-335 (KBF), 2016 U.S. Dist. LEXIS 128947 (S.D.N.Y. Sep. 16, 2016)	E&O: tech	NY	The insured's notice of "problems and delay" and of "trouble brewing" sent on the last day of the coverage period did not constitute proper notice of a claim under the policy.
Michaels v. First USA Title, LLC, No. A14-0931, 2015 Minn. App. Unpub. LEXIS 323 (Apr. 6, 2015)	E&O: title agent	MN	Although the insured notified its insurer of the wrongful acts and a similar lawsuit, it failed to provide notice of a different lawsuit brought against the insured.
Zurich Am. Ins. Co. v. Expedient Title, Inc., No. 3:11-cv-001633, 2015 U.S. Dist. LEXIS 167998 (D. Conn. Dec. 16, 2015)	E&O: title agent	CT	Letter to the insured seeking damages was a "claim" under the policy that should have been reported.
Thames v. Evanston Ins. Co., 665 F. App'x 716 (10th Cir. 2016)	E&O: title agent	OK	Although the insured reported a related temporary restraining order action, it failed to report a subsequent lawsuit to the insurer.
Lloyd's Syndicate 3624 (Hiscox) v. Clow, 2022 U.S. Dist. LEXIS 36595 (N.D. Ill. Mar. 2, 2022)	E&O: trustees	IL	The insured failed to report a letter from the buyer for real estate complaining about undisclosed contamination and remediation costs.
AHSL Enters. v. Greenwich Ins. Co., No. B292484, 2020 Cal. App. Unpub. LEXIS 1279 (Cal. Ct. App. Feb. 25, 2020)	Employment practices liability insurance (EPLI)	CA	Insured failed to timely report a claim first made in an administrative proceeding against the insured.
AV Builder Corp. v. Houston Cas. Co., 2022 U.S. Dist. LEXIS 108378 (S.D. Cal. Mar. 22, 2022)	EPLI	CA	The insured negotiated a severance and release of claims for an employee during the initial policy period. However, it failed to report this information to its insurer at that time.

Case	Coverage Type	State	Facts
Darwin Nat'l Assurance Co. v. Kentucky State Univ., No. 2019-CA-1811-MR, 2021 Ky. App. LEXIS 31 (Ky. App. Mar. 19, 2021), *review granted*, 2021 Ky. LEXIS 473 (Ky. Dec. 8, 2021)	EPLI	KY	Insured reported lawsuits filed against it 3 days after the policy's expiration.
Financial Indus. Regulatory Auth. v. Axis Ins. Co., 951 F. Supp. 2d 826 (D. Md. 2013)	EPLI	MD	Insured had notice of an EEOC charge of discrimination during the initial policy period but reported the claim during the renewal policy.
John Hiester Chrysler Jeep LLC v. Greenwich Ins. Co., 2017 U.S. Dist. LEXIS 202327 (E.D.N.C. Dec. 8, 2017)	EPLI	NC	The insured failed to report multiple EEOC charges filed against it until after the relevant policies had expired.
LeCuyer v. West Bend Mut. Ins. Co., No. A13-1685, 2014 Minn. App. Unpub. LEXIS 714 (July 14, 2014)	EPLI	MN	Attorney did not provide notice of demand letter and suit for 2 years.
Meadows Constr. Co. LLC v. Westchester Fire Ins. Co., 100 Mass. App. Ct. 1120, 180 N.E.3d 1032 (2022)	EPLI	MA	Class action lawsuit filed against the insured was not reported until after the policy's expiration.
Valentine v. Federal Ins. Co., No. 14-18-00438-CV, 2020 Tex. App. LEXIS 2537 (Tex. App. Mar. 26, 2020)	EPLI	TX	An employee of the insured filed a discrimination claim with the EEOC during the insurer's policy period.
Stadium Motorcars, LLC v. Federal Ins. Co., No. H-18-1920, 2019 U.S. Dist. LEXIS 82251 (S.D. Tex. May 15, 2019)	EPLI	TX	Although the insured provided notice of an initial lawsuit filed against it by an employee, that lawsuit was later dismissed. The insured then failed to provide notice of a subsequent arbitration claim to its insurer during the policy period or ERP.
Bosley v. Associated Paper Stock, Inc., 2022-Ohio-2649 (Ohio App. June 30, 2022)	EPLI	OH	Insured failed to notify its insurer for 9 months after an age discrimination suit was filed against it.
Boggey's Inc. v. Foremost Signature Ins. Co., No. 1883CV00863, 2020 Mass. Super. LEXIS 768 (Mass Super. June 29, 2020)	EPLI	MA	Insured failed to report the lawsuit filed against it until after the policy expired.

Case	Coverage Type	State	Facts
Plotkin v. Republic-Franklin Ins. Co., 2019 NY Slip Op 08233 (NY App. Div. Nov. 13, 2019)	EPLI	NY	A company owner who allegedly sexually assaulted an employee failed to provide a presuit notice letter to the insurer during the applicable policy period.
Secure Energy, Inc. v. Philadelphia Indem. Ins. Co., 2013 U.S. Dist. LEXIS 69320 (E.D. Mo. May 16, 2013)	EPLI	PA	For nearly 3 years, the insured did not report an employee's demand for commission amounts.
Nicholas Petroleum, Inc. v. Mid-Continent Cas. Co., No. 05-13-01106-CV, 2015 Tex. App. LEXIS 7489 (Tex. App. July 21, 2015)	Pollution liability	TX	Insured failed to report multiple demand letters during the policy period.
GS2 Eng'g & Envtl. Consultants, Inc. v. Zurich Am. Ins. Co., 956 F. Supp. 2d 686 (D.S.C. 2013)	Pollution liability	SC	The insured failed to report a lawsuit served against it during the policy period.
Garrison Southfield Park L.L.C. v. Aspen Specialty Ins. Co., 2022-Ohio-709 (Ohio App. Mar. 10, 2022)	Pollution liability	OH	Even though the insured knew of pollution incidents during the policy, it failed to report them until after the policy expired.
Georgian Am. Alloys, Inc. v. AXIS Ins. Co., No. 21–1947, 2022 U.S. App. LEXIS 24536 (3d Cir. Aug. 31, 2022).	Products liability	DE	The insured provided notice of a lawsuit filed against it for alleged "fraudulent schemes" nearly 2 months after the relevant policy's expiration.
KVK-Tech, Inc. v. Navigators Specialty Ins. Co., No. 1:21-cv-286, 2021 U.S. Dist. LEXIS 244814 (S.D. Ala. Dec. 23, 2021)	Products liability excess	AL	The insured failed to provide notice of an opioid lawsuit filed against it until after the policy expired.
Emissions Tech., Inc. v. Twin City Fire Ins. Co., No. CV10-0393, 2010 U.S. Dist. LEXIS 117926 (D. Ariz. Nov. 4, 2010)	D&O	AZ	The insured provided notice of the lawsuit filed against it 2 years after the policy expired.
National Union Fire Ins. Co. v. Willis, 296 F.3d 336 (5th Cir. 2002)	D&O	TX	Director failed to report a lawsuit during the initial policy period. Instead, it reported the suit late during the subsequent policy period.
Physicians Ins. Co. of Wis., Inc. v. Williams, 128 Nev. 324, 279 P.3d 174 (2012)	E&O: physicians	NV	Insured dentist knew of demand from a patient but failed to report it to the insurer until after the policy expired.

Denials Upheld Where the Insured Had Knowledge of a Wrongful Act That Could Give Rise to a Claim

The next category is where the insured may have actual knowledge of a wrongful act that could give rise to a claim. However, the insured mistakenly believes they might be able to cure the mistake and thus avert a claim. While this may be true, this thinking can lead to a failure to disclose the potential claim based on warranty questions that exist on the application. If the insured's actions do not avert the claim, then the failure to disclose the potential claim is ripe now for a denial based on a prior acts exclusion.

As soon as an insured tries to cure a problem, that is precisely when they need to report the matter under the incident reporting provision.[17] Illustrative of these denials are the following 65 cases involving denials upheld by courts based on prior notice exclusions or conditions.

[17] This issue should be disclosed due to application warranty questions.

Case	Coverage Type	State	Facts
Ritrama, Inc. v. HDI-Gerling Am. Ins. Co., 796 F.3d 962 (8th Cir. 2015)	CGL: claims made	MN	A spreadsheet with multiple demands was sent to the insured prior to the policy period.
BioChemics, Inc. v. AXIS Reinsurance Co., 924 F.3d 633 (1st Cir. 2019)	D&O	MA	Subpoenas served on insured by Securities and Exchange Commission (SEC) prior to the inception of the policy.
Tile Shop Holdings, Inc. v. Allied World Nat'l Assurance Co., 981 F.3d 655 (8th Cir. 2020)	D&O	MN	The insured failed to disclose in SEC filings related-party transactions that resulted in shareholder lawsuits.
Landmark Am. Ins. Co. v. Navigators Ins. Co., 354 F. Supp. 3d 1078 (N.D. Cal. 2018)	D&O	CA	Because the insured provided notice of a potential claim under a prior policy, an exclusion for "any fact, circumstance or situation which has been the subject of any notice given under any other policy" barred coverage.
Admiral Ins. Co. v. Superior Ct., 18 Cal. App. 5th 383 (Nov. 21, 2017)	E&O: allied med.	CA	Insured had knowledge of demand letters prior to the policy's inception.
ChemTreat, Inc. v. Certain Underwriters at Lloyd's of London, 488 F. Supp. 3d 343 (E.D. Va. 2020)	E&O: architects & engineers	VA	Insured received presuit letters that included a litigation hold prior to the policy's inception.
Alterra Excess & Surplus Ins. Co. v. Gotama Bldg. Eng'rs, Inc., No. CV 14–2969, 2014 U.S. Dist. LEXIS 110416 (C.D. Cal. July 24, 2014)	E&O: architects & engineers	CA	Insured failed to report a demand letter prior to the inception of the policy.
Nova Se. Univ., Inc. v. Continental Cas. Co., No. 18-CIV-61842-RAR, 2019 U.S. Dist. LEXIS 222124 (S.D. Fla. Dec. 27, 2019)	E&O: architects & engineers	FL	Insured contractor knew of construction deficiencies in the project that could give rise to a claim prior to the policy's inception.

Case	Coverage Type	State	Facts
B Five Studio LLP v. Great Am. Ins. Co., 414 F. Supp. 3d 337 (E.D.N.Y. 2019)	E&O: architects & engineers	NY	Insured applied for a policy after receiving demand letters relating to extreme leak problems due to the insured's allegedly defective design.
Berkley Assurance Co. v. Hunt Constr. Grp., 465 F. Supp. 3d 370 (S.D.N.Y. 2020)	E&O: architects & engineers	NY	Insured failed to report a lawsuit filed against it during the relevant policy period.
Alps Prop. & Cas. Ins. Co. v. Bredahl & Assocs., P.C., 24 F.4th 1185 (U.S. 8th Cir. 2022)	E&O: attorney	ND	Insured attorneys failed to appear at the client's trial prior to the policy's inception.
Alps Prop. & Cas. Ins. Co. v. Kalicki Collier, LLP, 526 F. Supp. 3d 805 (D. Nev. 2021)	E&O: attorney	NV	Law firm knew that letting the statute of repose run without a good reason might lead the client to sue for malpractice prior to the policy's inception.
ALPS Prop. & Cas. Ins. Co. v. Keller, Reynolds, Drake, Johnson & Gillespie, P.C., 2021 MT 46, 403 Mont. 307, 482 P.3d 638 (Feb. 23, 2021)	E&O: attorney	MT	Firm or attorney knew about discovery sanctions and a default judgment related to its actions prior to the policy's inception.
ALPS Prop. & Cas. Ins. Co. v. Merdes & Merdes, P.C., 2018 U.S. Dist. LEXIS 39653 (D. Alaska Mar. 12, 2018)	E&O: attorney	AK	Firm had knowledge of demand prior to the policy's inception.
Bar Plan Mut. Ins. Co. v. Likes Law Office, LLC, 44 N.E.3d 1279 (Ind. App. 2015)	E&O: attorney	IN	Prior to the policy period, the firm failed to respond to interrogatories. The client's case was dismissed as a result.
Blum Collins LLP v. NCG Prof'l Risks, Ltd., No. CV 12–8996, 2014 U.S. Dist. LEXIS 109915 (C.D. Cal. July 31, 2014)	E&O: attorney	CA	Firm entered into a tolling agreement prior to the policy's inception.
Cardenas v. Twin City Fire Ins. Co., No. 13 C 8236, 2014 U.S. Dist. LEXIS 134194 (N.D. Ill. Sep. 24, 2014)	E&O: attorney	IL	Firm aware of appellate decisions faulting it for the dismissal of a client's suit prior to policy's inception.
Chicago Ins. Co. v. Paulson & Nace, PLLC, 414 U.S. App. D.C. 399, 783 F.3d 897 (2015)	E&O: attorney	DC	Firm knew of the dismissal of a client's suit due to the firm's errors prior to the inception of the policy.
Clauson & Atwood v. Professionals Direct Ins. Co., 2013 DNH 75 (May 13, 2013)	E&O: attorney	NH	The insured law firm blew the statute of limitations and received a notice of intent letter before the policy's inception.

Case	Coverage Type	State	Facts
Gonakis v. Medmarc Cas. Ins. Co., 2017 U.S. Dist. LEXIS 56789 (N.D. Ohio Apr. 13, 2017)	E&O: attorney	OH	Insured law firm received a demand letter prior to the policy's inception.
Innes v. Saint Paul Fire & Marine Ins. Co., No. 12–234, 2015 U.S. Dist. LEXIS 121753 (D.N.J. Sep. 11, 2015)	E&O: attorney	NJ	Demand letter sent to the insured law firm before the policy's inception.
Farbstein v. Westport Ins. Corp., 2017 U.S. Dist. LEXIS 125990 (S.D. Fla. Aug. 9, 2017)	E&O: attorney	FL	Insured law firm knew of wrongful acts before the renewal policy became effective.
Imperium Ins. Co. v. Porwich, 2015 N.J. Super. Unpub. LEXIS 395 (N.J. Super. Feb. 27, 2015)	E&O: attorney	NJ	Prior to policy's inception, a lawyer had been sent to the ethics committee relating to their actions in causing a client's claim to be dismissed due to errors.
Koransky, Bouwer & Poracky, P.C. v. Bar Plan Mut. Ins. Co., 712 F.3d 336 (7th Cir. 2013)	E&O: attorney	IN	The attorney misfiled a contract before the policy's inception.
Pelagatti v. Minnesota Lawyers Mut. Ins. Co., No. 11–7336, 2013 U.S. Dist. LEXIS 90041 (E.D. Pa. June 25, 2013)	E&O: attorney	PA	Law firm failed to report a lawsuit dismissed due to its actions.
Thomson v. Hartford Cas. Ins. Co., 656 F. App'x 109, 2016 U.S. Dist. LEXIS 127261 (6th Cir. 2016)	E&O: attorney	MI	The insured law firm knew of its errors in acting as a trustee before the policy's inception.
Zavodnick, Zavodnick & Lasky, LLC v. National Liab. & Fire Ins. Co., 2019 U.S. Dist. LEXIS 33173 (E.D. Pa. Mar. 1, 2019)	E&O: attorney	PA	Law firm's client asked for a copy of their file, which the insured conceded was a bad thing.
Ruiz v. Bar Plan Mut. Ins. Co., 590 S.W.3d 333 (Mo. Ct. App. Sept. 3, 2019)	E&O: attorney	MO	Law firm failed to provide notice to the insurer in the renewal application of potential malpractice.
Wesco Ins. Co. v. Layton, 725 F. App'x 289 (5th Cir. 2018)	E&O: attorney	TX	Malpractice lawsuit filed against the law firm prior to purchasing the policy.
Allied World Ins. Co. v. Lamb McErlane. P.C., No. 17–2878, 2018 U.S. Dist. LEXIS 29223 (E.D. Pa. Feb. 23, 2018)	E&O: attorney	PA	A letter was sent to the law firm seeking recovery of excessive fees prior to the policy period.
Synergy Law Grp., LLC v. Ironshore Specialty Ins. Co., 2015 IL App (1st) 142070-U (Mar. 24, 2015)	E&O: attorney	IL	An attorney knew he made an error drafting a document that would likely lead to litigation before the policy's inception.

Case	Coverage Type	State	Facts
ALPS Prop. & Cas. Ins. Co. v. Edenfield, No. CV 621–008, 2022 U.S. Dist. LEXIS 161411 (S.D. Ga. Sep. 7, 2022)	E&O: attorney	GA	Law firm that failed to comply with the statute of limitations should have anticipated a claim prior to the inception of the policy.
Roberts v. Alps Prop., 2020 U.S. Dist. LEXIS 267250 (D. Neb. Nov. 23, 2020)	E&O: attorney	NE	Prior to the inception of the policy, a client advised the insured's attorney that he did not think he was protecting the client's interests and was dissatisfied with the results, fired the attorney, and wanted the attorney to contact the attorney's insurer.
Axis Ins. Co. v. Farah & Farah, P.A., 503 F. App'x 947 (11th Cir. 2013)	E&O: attorney	FL	Previously affiliated lawyer was a "person proposed for coverage" and had knowledge of a potential malpractice claim prior to the policy's inception.
Kinsale Ins. Co. v. Beginnings, 557 F. Supp. 3d 1000 (C.D. Cal. 2021)	E&O: care facility	CA	General manager knew that the resident had fallen and subsequently died before the policy incepted.
WMOP, LLC v. Scottsdale Ins. Co., 2021 NY Slip Op 01240, 192 A.D.3d 411, 139 N.Y.S.3d 540 (NY App. Mar. 2, 2021)	E&O: care facility	NY	Insured failed to give notice of the claim in the proper policy because the letter sent to the insured did not include a demand for monetary damages.
Rimini St., Inc. v. AXIS Ins. Co., 2022 U.S. Dist. LEXIS 220447 (N.D. Ill. Dec. 7, 2022)	E&O: excess	IL	The claim against the insured was made before the inception of the policy period for the excess insurers.
Infinity Q Capital Mgmt. v. Travelers Cas. & Sur. Co., No. N21C-07-158 EMD CCLD, 2022 Del. Super. LEXIS 363 (Super. Ct. Aug. 15, 2022)	E&O: excess	DE	SEC inquiry to the insured constituted prior knowledge of a claim, triggering the policy's prior knowledge policy exclusion.
Berkshire Hathaway Specialty Ins. Co. v. H.I.G. Capital, LLC, 163 N.Y.S.3d 64 (NY App. Feb. 24, 2022)	E&O: excess	NY	The insured knew of improper actions relating to pensions before applying for the insurance policy.
TIG Ins. Co. v. Tyco Int'l Ltd., 919 F. Supp. 2d 439 (M.D. Pa. 2013)	E&O: excess	PA	Insured had actual knowledge of fire loss prior to the inception of the policy.
Jalbert v. Zurich Servs. Corp., 953 F.3d 143 (1st Cir. 2020)	E&O: excess	MA	SEC's Formal Order sent to the insured before the excess insurer's policy period constituted a potential claim that should have been reported.

Case	Coverage Type	State	Facts
James River Ins. Co. v. Inn-One Home, LLC, No. 18-cv-00100, 2021 U.S. Dist. LEXIS 153734 (D. Vt. Aug. 16, 2021)	E&O: health care	VT	Insured knew of multiple incidents of wrongdoing prior to the policy period, including termination of an employee.
Pacific Coast Surgical Ctr., Ltd. P'ship v. Scottsdale Ins. Co., 823 F. App'x 551 (9th Cir. 2020)	E&O: medical malpractice	CA	Law firm was aware of a demand letter from the client before the policy's inception.
Western World Ins. Co. v. Professional Collection Consultants, 721 F. App'x 621 (9th Cir. 2018)	E&O: miscellaneous	CA	Insured was aware of criminal subpoenas prior to the policy's inception.
Berkley Assurance Co. v. Expert Grp. Int'l Inc., 779 F. App'x 604 (11th Cir. June 27, 2019)	E&O: miscellaneous	FL	The insured knew of wrongful acts prior to the renewal policy but failed to report them.
Certain Underwriters at Lloyds London v. KG Admin. Servs., No. 5:19-cv-1246, 2019 U.S. Dist. LEXIS 214199 (N.D. Ohio Dec. 12, 2019)	E&O: miscellaneous	OH	Insured did not report three claims against it in a renewal application.
Personal Res. Mgmt. v. Evanston Ins. Co., 7 N.E.3d 1025 (Ind. Ct. App. 2014)	E&O: miscellaneous	IN	Three lawsuits filed prior to the renewal policy were not covered.
Ditech Fin. LLC v. AIG Specialty Ins. Co., No. 8:20-cv-409, 2021 U.S. Dist. LEXIS 178422 (M.D. Fla. Sep. 20, 2021)	E&O: mortgage	FL	A letter from the US Trustee sent to the insured prior to the inception of the policy constituted a claim made prior to the policy period.
United States v. City of Española, No. 16-CV-391, 2019 U.S. Dist. LEXIS 229826 (D.N.M. Dec. 2, 2019)	E&O: municipal liability	NM	City had offered to settle a claim prior to the inception of the policy. However, on its application, it stated that it was not aware of any incidents that may result in a claim.
Great Divide Ins. Co. v. Lake Taneycomo Woods Dev. Improvement Ass'n, No. 6:15-cv-03462, 2016 U.S. Dist. LEXIS 204002 (W.D. Mo. Dec. 13, 2016)	E&O: municipal liability	MO	Even though the wrongful death lawsuit was filed against the insured after the policy incepted, the insured was aware that a person was electrocuted prior to the policy period.
Rowland v. Diamond State Ins. Co., 2013 U.S. Dist. LEXIS 133420 (S.D. Fla. Sep. 18, 2013)	E&O: not for profit	FL	Lawsuit filed and served on the insured before the inception of the policy.
Metropolitian Dist. Comm'n v. QBE Ams., Inc., 416 F. Supp. 3d 66 (D. Conn. 2019)	E&O: public officials & employees	CT	The insured knew of adverse litigation 4 months prior to applying for the policy.

Case	Coverage Type	State	Facts
American W. Home Ins. Co. v. Gjonaj Realty & Mgmt. Co., 2020 NY Slip Op 08027 (NY App. Div. Dec. 30, 2020)	E&O: real estate	NY	The insured failed to report a lawsuit against it to a prior policy. Moreover, no coverage was owed under the subsequent policy.
Bararsani v. HDI Glob. Ins. Co., 2021 U.S. Dist. LEXIS 196275 (C.D. Cal. Sep. 16, 2021)	E&O: real estate	CA	The insured made misrepresentations prior to the policy's inception.
Carlson v. Century Sur. Co., 606 F. App'x 882 (9th Cir. 2015)	E&O: real estate	CA	Demand letter received prior to the inception of the policy.
White v. Great Am. Assur. Co., 641 S.W.3d 668 (Ark. App. Feb. 23, 2022)	E&O: real estate	AR	Insured was sent two letters requesting details of its insurance policies.
Clark Sch. for Creative Learning, Inc. v. Philadelphia Indem. Ins. Co., 734 F.3d 51 (1st Cir. 2013)	E&O: school officials	MA	Insured knew that it had donated money for purposes other than as intended by the donor prior to the policy period.
Aztec Abstract & Title Ins., Inc. v. Maxum Specialty Grp., 302 F. Supp. 3d 1274 (D.N.M. 2018)	E&O: title agent	NM	The insured was aware that its erroneous legal descriptions in two title transactions made before the policy period might result in a claim.
Regency Title Co., LLC v. Westchester Fire Ins. Co., 5 F. Supp. 3d 836 (E.D. Tex. 2013)	E&O: title agent	TX	Title company knew of an administrative complaint prior to the policy inception.
Zurich Am. Ins. Co. v. Diamond Title of Sarasota, Inc., No. 8:10-cv-383, 2013 U.S. Dist. LEXIS 170981 (M.D. Fla. Dec. 4, 2013)	E&O: title agent	FL	Insured that signed the application was participating in mortgage fraud prior to the inception of the policy.
Lexington Ins. Co. v. Integrity Land Title Co., 721 F.3d 958 (8th Cir. 2013)	E&O: title agent	MO	Finding that the insured had notice of the beginning of a dispute prior to the inception of the policy.
Galarza-Cruz v. Grupo Hima San Pablo, Inc., No. 17–1606, 2020 U.S. Dist. LEXIS 94546 (D.P.R. May 28, 2020)	EPLI	PR	Insured received a demand letter prior to policy's inception.
Tucker v. Amican Int'l Grp., Inc., No. 3:09-CV-1499 (CSH), 2015 U.S. Dist. LEXIS 9874 (D. Conn. Jan. 28, 2015)	EPLI	CT	A demand letter sent to the insured prior to the inception of the policy.

Relatedly, insurers will sometimes seek to rescind or void an existing policy based upon a misrepresentation in the application. An insured is in the absolute worst position when the policy is rescinded since it is as if the policy were never issued at all. This leaves the insured with a major gap in coverage. Here are **16** cases where the courts upheld the rescission of a policy by the insurers.

Case	Coverage Type	State	Facts
Hanover Ins. Co. v. Paramount Fin. Servs., No. 18-cv-02149, 2020 U.S. Dist. LEXIS 13629 (D. Colo. Jan. 28, 2020)	E&O: accountant	CO	A financial firm failed to disclose in its renewal policy that the CFO was accepting upfront fees for tax services but not providing services for those clients.
ALPS Prop. & Cas. Ins. Co. v. Turkaly, 2018 U.S. Dist. LEXIS 5026 (S.D. Va. Jan. 11, 2018)	E&O: attorney	WV	The insured had knowledge of the lawsuit prior to the policy's inception.
Carolina Cas. Ins. Co. v. Robert S. Forbes PC, 2017 U.S. Dist. LEXIS 3422 (S.D. Ill. Jan. 10, 2017)	E&O: attorney	IL	Before the policy incepted, the insured firm was aware that a document was not timely filed.
Colony Ins. Co. v. Kwasnik, Kanowitz & Assocs., P.C., No. 1:12-cv-00722, 2014 U.S. Dist. LEXIS 87659 (D.N.J. June 27, 2014)	E&O: attorney	NJ	Insured made misrepresentations in its insurance application as to past claims filed against the firm or its attorney.
Illinois State Bar Ass'n Mut. Ins. Co. v. Law Office of Tuzzolino & Terpinas, 2015 IL 117096, 389 Ill. Dec. 575, 27 N.E.3d 67 (Feb. 20, 2015)	E&O: attorney	IL	Client made a demand on the insured law firm prior to the policy's inception.
Imperium Ins. Co. v. Shelton & Assocs., P.A., 761 F. App'x 412 (5th Cir. 2019	E&O: attorney	MS	Attorney knew of errors before the policy's inception.
Ironshore Indem., Inc. v. Pappas & Wolf, LLC, 2018 N.J. Super. Unpub. LEXIS 1010 (N.J. Super. Ct. App. Div. May 1, 2018)	E&O: attorney	NJ	The insured attorney committed a wrongful act at the predecessor firm that was not disclosed to the insurer on the application.
Liberty Ins. Underwriters, Inc. v. Wolfe, 2017 U.S. Dist. LEXIS 16295 (D.N.J. Feb. 3, 2017)	E&O: attorney	NJ	The firm did not disclose on its insurance application its failure to appeal a judgment against a client and its failure to file suit.
Minnesota Lawyers Mut. Ins. Co. v. Schulman, 2016 U.S. Dist. LEXIS 127261 (N.D. Ill. Sept. 19, 2016)	E&O: attorney	IL	Attorney did not disclose on the application that the lawyer allowed various patent applications to expire for two clients.

Case	Coverage Type	State	Facts
Travelers Cas. & Sur. Co. of Am. v. Grimmer Davis Revelli & Ballif, P.C., 2021 U.S. Dist. LEXIS 218483 (D. Utah Nov. 10, 2021)	E&O: attorney	UT	Lawyer had knowledge of the high likelihood of suit being filed prior to policy inception but did not disclose the information on the application.
Travelers Cas. & Sur. Co. of Am. v. Gold, Schollar, Moshan, PLLC, 2018 U.S. Dist. LEXIS 46568 (S.D.N.Y. Mar. 14, 2018)	E&O: attorney	NY	The managing partner signing the policy's application was unaware that another firm member was embezzling funds. Thus, the managing partner did not report those facts to the insurer.
Soni v. Certain Underwriters at Lloyd's, London, 2022 U.S. Dist. LEXIS 169216 (C.D. Cal. Sept. 19, 2022)	E&O: attorney	CA	Prior to the inception of the law firm's professional liability insurance policy, it was sued by a former client for breach of contract and breach of fiduciary duty. However, it did not report this information in the policy's application.
Admiral Ins. Co. v. Fisher, 2018 W. Va. LEXIS 467 (W. Va. June 6, 2018)	E&O: doctor	WV	Insured had knowledge prior to the policy's inception that they were being targeted in a criminal investigation but did not disclose it on the application.
Atain Specialty Ins. Co. v. Lake Lindero HOA, No. 21–55319, 2022 U.S. App. LEXIS 3313 (9th Cir. Feb. 7, 2022)	E&O: homeowners' association	CA	The insured did not report to its insurer that its prior termination of a management contract would likely lead to it being sued.
Scottsdale Indem. Co. v. Sun Coast Gen. Ins. Agency, Inc., No. 8:19-cv-01947, 2020 U.S. Dist. LEXIS 247439 (C.D. Cal. Dec. 21, 2020)	E&O: insurance broker	CA	Insured failed to report demand letters seeking it to put its professional liability insurer on notice of a potential suit.
Capson Physicians Ins. Co. v. MMIC Ins. Inc., 829 F.3d 951 (8th Cir. 2016)	E&O: physicians	IA	Insured failed to disclose a claim to the insurer on the policy's application.

Denials Upheld Based on Related Claims

The third category illustrates another problem faced by policyholders—the issue of related claims. It is possible that an insured could commit an error or series of errors that could give rise to multiple related claims—for example, an initial claimant that sued the insured and a future lawsuit or lawsuits brought by others damaged by the same error or series of errors.

In the past 10 years, there has been an uptick in decisions where courts uphold claims denials because they were related to a prior reported claim submitted to the same or a different insurer. The obvious lesson is that whenever one has a new claim, one must consider whether there is any possibility this is related to a claim that was made against them in the past and during a different policy term with either the same insurer or a different one. Thus, the new related claim should be reported immediately to the prior insurer handling the original claim.

There are at least **34** cases in the past decade where courts upheld the claim denial because it was related to a prior reported claim submitted either to the same or a different insurer.

Case	Coverage Type	State	Facts
Hanover Ins. Co. v. R.W. Dunteman Co., 51 F.4th 779 (7th Cir. 2022)	D&O	IL	An amended lawsuit that added new claims and new insureds related back to the original lawsuit filed against the insured during the prior policy period.
Worthington Fed. Bank v. Everest Nat'l Ins. Co., 110 F. Supp. 3d 1211 (N.D. Ala. 2015)	D&O	AL	A later claim against the insured was related to an earlier claim.
Vita Food Prods. v. Navigators Ins. Co., No. 16 C 08210, 2017 U.S. Dist. LEXIS 85257 (N.D. Ill. June 2, 2017)	D&O	IL	An underlying suit was related and arose out of an earlier letter that was sent prior to the inception of the policy period.
Alexbay LLC v. QBE Ins. Corp., 486 F. Supp. 3d 511 (D. Conn. Sept. 11, 2020)	D&O	CT	A 2016 lawsuit against the insured for a conveyance of shares was related to a 2014 lawsuit that also challenged the conveyance.
SP Syntax Ltd. Liab. Co. v. Federal Ins. Co., No. 1 CA-CV 14-0638, 2016 Ariz. App. Unpub. LEXIS 278 (Ariz. App. Mar. 3, 2016)	D&O	AZ	The crux of the lawsuit against the insured was misrepresentations made by the insured, which had been the subject of a prior lawsuit that predated the inception of the policy.
Nomura Holding Am., Inc. v. Federal Ins. Co., 45 F. Supp. 3d 354 (S.D.N.Y. 2014)	D&O	NY	A number of security lawsuits filed in 2011 and 2012 against the insureds were related to an earlier 2008 security lawsuit that predated the policy.
Travelers Cas. & Sur. Co. of Am. v. Jeld-Wen Holding, Inc., No. 3:21-cv-173 (W.D. N.C. Nov. 21, 2022)	D&O: excess	NC	Prior antitrust lawsuit involving different plaintiffs, time periods, and conduct was related to a later securities class action suit.

Case	Coverage Type	State	Facts
Ric-Man Constr., Inc. v. Pioneer Special Risk Ins. Servs., 545 F. Supp. 3d 525 (E.D. Mich. 2021)	E&O: architects & engineers	MI	A lawsuit filed against the insured prior to the policy period related to subsequent cross-claims against the insured filed during the policy period.
Ettinger & Assocs., LLC v. Hartford/Twin City Fire Ins. Co., 22 F. Supp. 3d 447 (E.D. Pa. 2014)	E&O: attorney	PA	Even though the insured was sued by its client after the policy's inception, the lawsuit related back to a prior lawsuit involving similar allegations.
Gandor v. Torus Nat'l Ins. Co., 140 F. Supp. 3d 141 (D. Mass. 2015)	E&O: attorney	MA	Prior to the policy being issued, the insured knew a client would bring a claim when the insured failed to perfect an appeal of an adverse zoning decision.
Brecek & Young Advisors v. Lloyds of London Syndicate 2003, 715 F.3d 1231 (10th Cir. 2013)	E&O: broker	NY	A later-filed arbitration related back to earlier-filed arbitrations that were filed prior to the policy's inception.
Pine Bluff Sch. Dist. v. Ace Am. Ins. Co., 984 F.3d 583 (8th Cir. 2020)	E&O: educators	AR	The court held that the EEOC charge made in 2015 related to a 2016 lawsuit against the employer.
Morden v. XL Specialty Ins., 903 F.3d 1145 (10th Cir. Sept. 10, 2018)	E&O: financial services	UT	Prior SEC notices to the insured related to a later lawsuit against it.
Navigators Specialty Ins. Co. v. B.D. McClure & Assocs., Ltd., 2020 U.S. Dist. LEXIS 185391 (N.D. Ill. Oct. 6, 2020)	E&O: insurance broker	ND	A lawsuit filed against the insured in 2010 constituted a claim in 2010 even though a suit was refiled years later.
Direct Gen. Ins. Co. v. Indian Harbor Ins. Co., 661 F. App'x 980 (11th Cir. 2016)	E&O: insurance	FL	A class action suit against an insurance company related to earlier personal injury protection claims that took place prior to the policy period.
Stafford v. Stanton, No. 17–262, 2022 U.S. Dist. LEXIS 175471 (W.D. La. Sep. 27, 2022)	E&O: investment adviser	LA	A lawsuit filed against the insured during the policy period related back to a notice of potential claim that the insured received during the prior policy period.
Berkshire Hathaway Specialty Ins. Co. v. H.I.G. Capital, LLC, 102 N.Y.S.3d 168 (NY App. May 21, 2019)	E&O: investment adviser	NY	Two separate "warning notices" issued by the UK Pensions Regulator stemmed from the insured's 2011 purchase of a UK entity, which occurred prior to the 2016 policy.
NCAA v. Ace Am. Ins., 151 N.E.3d 754 (Ind. Ct. App. July 15, 2020)	E&O: miscellaneous	IN	A claim against the NCAA related to remuneration caps imposed on student-athletes was related to a prior claim during a different policy period.

Case	Coverage Type	State	Facts
Old Bridge Mun. Utils. Auth. v. Westchester Fire Ins. Co., Civil Action No. 12–6232, 2016 U.S. Dist. LEXIS 99327 (D.N.J. July 29, 2016)	E&O: municipal liability	NJ	A 2009 lawsuit and a subsequent 2010 suit were interrelated wrongful acts that related back to the earlier policy period.
Great Am. Ins. Co. v. Sea Shepherd Conservation Soc'y, 2014 U.S. Dist. LEXIS 71462 (W.D. Wash. May 23, 2014)	E&O: not for profit	WA	A claim not reported during the initial policy period related to a subsequent claim filed and reported during the subsequent policy.
Darwin Nat'l Assur. Co. v. Westport Ins. Corp., 2015 U.S. Dist. LEXIS 42550 (E.D.N.Y. Mar. 13, 2015)	E&O: public officials & employees	NY	A related claim was filed against the insured 13 years prior to the policy, under which the insured reported the claim.
Sharp Realty & Mgmt., LLC v. Capitol Specialty Ins. Corp., 503 F. App'x 704 (11th Cir. 2013)	E&O: real estate	AL	Insured waited more than 8 months to provide notice of a lawsuit to its insurer until after the policy expired. Regarding the subsequent policy, the court found that the claim related back to an earlier action that preceded the policy period.
Datamaxx Applied Techs., Inc. v. Brown & Brown, Inc., No. 21–13451, 2022 U.S. App. LEXIS 23561 (11th Cir. Aug. 23, 2022)	E&O: tech	FL	A related claim was filed about 5 years before the period of the policy under which the insured gave notice.
Turner v. Cincinnati Ins. Co., 9 F.4th 300 (5th Cir. 2021)	E&O: trade school	TX	Related suit was filed against the insured prior to the issuance of the policy under which the insured gave notice.
PMTD Rests., LLC v. Houston Cas. Co., 2022 U.S. Dist. LEXIS 81404 (N.D. Ga. Mar. 23, 2022)	EPLI	GA	The initial discrimination charge made against the employer constituted the date of the claim even though the employer was later sued by the employee.
Allied World Specialty Ins. Co. v. SIU Physicians & Surgeons., Inc., No. 17-cv-03139, 2021 U.S. Dist. LEXIS 61536 (C.D. Ill. Mar. 30, 2021)	EPLI	IL	The court ruled that later consent form claims filed against the insured were related to the initial EEOC charge against the insured, which was not timely reported under any of the policies.
Clarksville Sch. Dist. v. Ace Am. Ins. Co., 2021 Ark. App. 308 (Ark. App. Sept. 1, 2022)	EPLI	AR	Finding that the EEOC charge and the subsequent lawsuit are a single claim first made when the EEOC charge was initially filed.

Case	Coverage Type	State	Facts
Regal-Pinnacle Integrations Indus. v. Philadelphia Indem. Ins. Co., 2013 U.S. Dist. LEXIS 56941 (D.N.J. Apr. 22, 2013)	EPLI	NJ	A lawsuit that was filed and reported to the insurer during the policy period was related to an earlier administrative action that took place prior to the start of the policy period.
MF Nut Co., LLC v. Continental Cas. Co., 2013 U.S. Dist. LEXIS 5894 (D. Haw. Jan. 14, 2013)	EPLI	HI	2006 EEOC charges filed against the insured that predated the inception of the policy were related to a subsequent lawsuit filed against the insured during the applicable policy period.
Public Risk Mgmt. of Fla. v. Munich Reinsurance Am., Inc., 38 F.4th 1298 (11th Cir. June 29, 2022)	Reinsurer	FL	The earliest of a related series of wrongful acts predated the relevant coverage period. Thus, the underlying policy did not afford coverage for the suit.
Cohen-Esrey Real Estate Servs. v. Twin City Fire Ins. Co., 636 F.3d 1300 (10th Cir. 2011)	E&O: contractor	NY	Insured's employee had engaged in similar fraudulent conduct in the past, and the insured had not taken steps to oversee the employee's work.

Denials Upheld Based on Prior Pending Claims

Some insurers use a prior and pending claim or litigation date (also known as a continuity date) to exclude coverage for any claim or lawsuit that is prior or pending to that date, even if the insured did not know about it. This is a dangerous risk limitation and operates differently from and often in addition to the more commonly used "prior act date," which concerns when the insured committed an error. A retroactive date or a prior act date exclusion applies to wrongful acts committed by the insured. If the wrongful act is prior to that date, a claim first made during the policy term will not be covered. A prior and pending claim date is somewhat different because only the claimant has control over when they formally make a claim or file the lawsuit. If that lawsuit or administrative claim is commenced prior to the prior pending date, even if the claim was first made against the insured and first discovered by the insured during the policy term, that claim would not be covered. Illustrative of these types of denials are the following cases.

Case	Coverage Type	State	Facts
AmerisourceBergen Corp. v. Ace Am. Ins. Co., 2014 PA Super 198, 100 A.3d 283 (Sept. 15, 2014)	D&O: excess	PA	A lawsuit was filed under seal and without the knowledge of the insured before the policy period. However, it was served on the insured midway through the policy period.
Old Bridge Mun. Utils. Auth. v. Westchester Fire Ins. Co., 2016 U.S. Dist. LEXIS 99327 (D.N.J. July 29, 2016)	E&O: municipal liability	NJ	Multiple claims against the insured related to the initial claim.

Denials Upheld for Reporting to the Wrong Person or Address

As unusual as it may sound, claim denials sometimes occur simply because the insured did not report the claim to the correct address. Almost every insurance policy sets forth how and where a claim should be reported to the company. This may exist in the conditions section, although sometimes it may appear on the policy's declaration page. The language specifies where the claim must be submitted. This could be via mail, an email address, or even a fax number. Nonetheless, it is incumbent upon everyone to realize that they must comply with those provisions *exactly.*

One of the cases illustrated below involves a new claim reported by the insured as part of the renewal process rather than as a stand-alone new claim. Thus, even though the insurance company underwriter knew about the claim disclosed on the renewal application, no one ever informed the claim department. **It is not the obligation of the underwriter to do so.** The courts have ruled it is a contractual obligation of the insured to submit the claim to the address required by the policy. This could also be the address of the third-party claim administrator designated by the insurer to handle all claims. What is important is the fact that the provisions of the policy control and that the insured must comply exactly as specified as illustrated by the following **9** decisions.

Case	Coverage Type	State	Facts
Heritage Bank of Commerce v. Zurich Am. Ins. Co., 2022 U.S. Dist. LEXIS 150720 (N.D. Cal. Aug. 17, 2022)	D&O: excess	CA	The insured bank mentioned these lawsuits in correspondence to its excess insurer's underwriting department during the 2018–2019 policy period but did not send any notice to the claims department until February 2021. The excess insurer denied coverage because the bank failed to meet the notice requirement.
Landmark Am. Ins. Co. v. Lonergan Law Firm, P.L.L.C., 802 F. App'x 122 (5th Cir. 2020), *rev'd on other grounds,* 802 Fed. Appx. 122 (5th Cir. Feb. 19, 2022)	E&O: attorney	TX	The district court ruled that notice of a claim was improper where the insured, during the policy period, reported it via a claim supplement to the renewal policy. The Fifth Circuit reversed the district court and ruled that the insurer must show prejudice before denying coverage.
Jordan v. Evanston Ins. Co., 23 F.4th 555 (5th Cir. Jan. 17, 2022)	D&O: excess	MS	Even though the insurer knew about the incident due to media statements, the court ruled that the statements were not a notice of claim to the insurer.
Cox v. Liberty Ins. Underwriters, Inc., 773 F. App'x 931 (9th Cir. July 19, 2019)	E&O: accountant	OR	Although the insured reported to the insurer some information about a client for which it performed accounting services during the policy period, it did not constitute proper notice of a claim under the policy.
Ironshore Specialty Ins. Co. v. Callister, No. 2:15-cv-00677, 2017 U.S. Dist. LEXIS 210973 (D. Utah Dec. 21, 2017)	E&O: attorney	UT	The court rejected that the insured complied with the notice provision in the policy by informing the insurer about the claim in a renewal application.

Case	Coverage Type	State	Facts
Univ. of Pittsburgh v. Lexington Ins. Co., No. 13-cv-335 (KBF), 2016 U.S. Dist. LEXIS 128947 (S.D.N.Y. Sep. 16, 2016)	E&O: tech	NY	The insured's notice of "problems and delay" and of "trouble brewing" sent on the last day of the coverage period did not constitute proper notice of a claim under the policy.
UnitedHealth Grp., Inc. v. Columbia Cas. Co., 941 F. Supp. 2d 1029 (D. Minn. 2013)	E&O: managed care excess	MN	Although the broker notified the underwriter of the claim, the policy had specific notice requirements not met by the insured.
Travelers Indem. Co. v. Northrop Grumman Corp., 677 F. App'x 701 (2d Cir. 2017)	Pollution liability	NY	Insured's broker forwarded a notice letter to the wrong address for Travelers, and the insured did not provide proper notice for nearly a decade. Also, regarding a separate policy issued, the insured's notice was deemed inadequate because it was directed to a different insurer with different policies.
Atlantic Health Sys. v. National Union Fire Ins. Co., 463 F. App'x 162 (3d Cir. 2012)	D&O	NJ	The insured sent notice of the underlying suit to the wrong address for the insurer.

Denials Upheld for Not Reporting a Claim "As Soon as Practicable"

Almost all claims-made policies today contain a conditions section. In that section is a notice of claim provision explaining when and how to report a claim. Invariably, these provisions require that a claim be submitted to the company "as soon as practicable." Some courts rule that this language means the claim must be reported as soon as possible and without excusable delay. Thus, more and more claims are being denied due to unnecessary or indefensible delays in reporting the claims to the insurance company.

The following **six** cases are those where the claim against the insured was first made and reported against the insured during the applicable policy term but not reported to the insurer as soon as practicable. Interestingly, this scenario arises from D&O liability policies, where the initial lawsuit is often submitted to corporate counsel. Surprisingly, corporate counsel is not asking whether there is insurance that might respond to the claim. This is especially noteworthy because 100 percent of the following cases and the resultant claim denials were preventable.

Case	Coverage Type	State	Facts
Templo Fuente De Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 129 A.3d 1069 (2016)	D&O	NJ	Insured waited about 6 months to report a lawsuit but still reported the claim with the policy.
American Guar. & Liab. Ins. Co. v. Law Offices of Richard C. Weisberg, 524 F. Supp. 3d 430 (E.D. Pa. 2021)	E&O: attorney	PA	After a law firm was sued by its clients, it failed to provide notice to its insurer for nearly 8 months.
MHM Corr. Servs. v. Darwin Select Ins. Co., Nos. 147556, 17–0825, 2021 Mass. Super. LEXIS 504 (Oct. 23, 2021)	E&O: private correctional	VA	Insured waited about 2 years to inform the insurer of the claim.
Indian Harbor Ins. Co. v. City of San Diego, 586 F. App'x 726 (2d Cir. 2014)	Products liability	NY	Insured provided notice of claims over 58 days late without a valid reason.
Food Mkt. Merch., Inc. v. Scottsdale Indem. Co., 857 F.3d 783 (8th Cir. 2017)	EPLI	MN	Although notice was provided during the policy period, the insured did not provide notice to its insurer for 6 months after being sued by its employee for unpaid commissions.
Nicholas Petroleum, Inc. v. Mid-Continent Cas. Co., No. 05-13-01106-CV, 2015 Tex. App. LEXIS 7489 (Tex. App. July 21, 2015)	Products liability	TX	Insured failed to report a claim for 64 days.

Conclusion: Diligence Is Necessary for Reporting Claims

Claims-made policies have been evolving for over half a century. It is disheartening that claims continue to be denied due to a lack of diligence, education, experience, or common sense. The common denominator in the majority of denials is the policyholder's failure to report a claim immediately and overcome ego or embarrassment issues.

As complicated as it may seem, the solution is simple from the policyholder's perspective. Put your ego or embarrassment aside. Report all claims immediately or report the facts under the incident reporting provision following its requirements. When appropriate, report the matter as a "claim" or an incident that could become a "claim" later. Given how courts now require exact compliance with clear and unambiguous policy provisions, it may be best to consult counsel experienced in insurance coverage issues on how to cover all the bases. Problem solved.

Moreover, if there is any possibility the current matter is "related" to another claim made and submitted to any prior insurer, report the current matter to that insurer—even if it's the same current insurer. The prior policy or claim number needs to be referenced, given how courts are using the exact policy language to make coverage determinations. Policyholders should report these types of claims explicitly—that is, "this claim may be related to a previous claim submitted to you under a previous policy."

Further, policyholders attempting to cure a mistake should go ahead and report it to their insurer. For example, lawyers encountering a potentially blown statute of limitations already know the facts or circumstances of a legal malpractice "claim."[18] A lawyer who waits to report this after attempting to fix the mistake does so at their peril. The financial impact of having a claim denied for late reporting, not to mention the possibility of having a loss of prior act coverage due to rescission of the policy based on misrepresentation, is a lot worse than the bruising of one's professional ego due to a lawsuit alleging a professional error.

Also, insurance brokers need to be more diligent in advising their clients on the necessity of reporting any potential claim. Such guidance would eliminate the denial of a claim related to a prior reported claim. Moreover, brokers should advise clients to be diligent and to take advantage of the safety net incident reporting provision of the policy. If there is a continued failure to report claims on a timely basis, this coverage denial trend will continue—as will the financial consequences unnecessarily experienced.

[18]Every "profession" or policy may have unique issues concerning what may or may not be "reportable." For instance, should every coverage denial by an insurer be reported as a potential errors and omissions claim by the insurance producer or every "change order" be a design error? I think not, and the requirements of the incident reporting clause provide additional guidance.

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