

Accountability

Issue XV

What's the buzz word this week (or what is an MDP)?

Since placing our first accountant's professional liability policy over 15 years ago, we have witnessed a variety of changes in the profession. No longer are CPAs merely financial experts, but have expanded their role into many non-traditional areas.

With increasing frequency the AICPA makes a new pronouncement about additional services that can be offered to the public by a CPA. The most topical of these are Assurance Services. According to the AICPA Committee on Assurance Services, such activities include:

- Risk Assessment:
- Business Performance Measurement:
- Information Systems Reliability:
- Electronic Commerce:
- Health Care Performance Management:
- ElderCare:

Each additional service presents new professional liability exposures to accountants that can often exceed the parameters of a professional liability insurance standard policy. For example, *risk assessment* will expose an accountant to those perils usually faced by a risk management consultant or insurance agent; *information systems reliability* creates a potential products liability exposure (if software or hardware is recommended); and *eldercare* can expose a CPA to contingent medical malpractice liability.

In some sense, a CPA has exceeded the bounds of traditional services and moved into areas normally the purview of other professionals.

Some accounting firms have hired non-accounting professionals either to complement existing services (like staff attorneys in the Tax Department) or to

spearhead the development of new services (this might include, human resource consultants, systems analysts, Personal Financial Planners or even medical professionals).

The latest description of these new style firms is Multi-Disciplinary Practices or MDP's. MDP's offer the public a broad variety of non-traditional and traditional services, provided by both CPA's and other professionals. Assurance Services, as defined by the AICPA, gives a pretty good idea of what is available, but are by no means a limitation.

Currently, the most common area of MDP activity is in the Tax Department, where many of the larger national and international firms now have teams of attorneys providing "consulting" services. The line of demarcation between traditional accounting services and legal advice has become blurred.

Some adventurous firms are considering becoming Application Service Providers (ASP's). Most commonly, this is where a firm, via the Internet, provides outsourced financial services to clients. Acting as an ASP creates a whole new range of exposures arising from doing business on the World Wide Web.

To ensure adequate professional liability coverage is afforded for these new activities, a thorough review of the firm's policy should be undertaken. The first area of review should be in the definitions section of the policy. Some insurers define covered professional services as:

services performed or advice given by the Insured in the Insured's practice in accountancy, financial planning and consulting;

Whether or not this is sufficiently broad to encompass non-traditional activities is the subject of interpretation. In many instances, the first occasion when this interpretation is discussed with an insurer, is when a claim is brought that arises from non-traditional activities. Obviously this is not the most positive forum in which to discuss with an insurer, what is and what is not, covered under a policy.

One insurer tacks onto the definition of professional services a catchall phrase that states:

***professional services** performed by the **Insured** in the course of an accountant-client relationship on behalf of one or more clients shall be deemed for the purpose of this section to be the performance of **Professional Services** for others in the **Insured's** capacity as an accountant, although such services could be performed wholly or in part by non-accountants.*

The implied intent of this phrase is to cover non-traditional services; however, the services must be performed *in the course of an accountant-client relationship*. Whether risk management or eldercare services performed by a non-CPA are covered may be a matter of debate between an insured and insurer at the time a claim is made.

To dispel any uncertainty a professional liability policy should contain a broad definition of professional services. The best policies that provide this are those that use wording similar to the following:

“Professional Services” means services performed or advice given by **you** provided that the fee for such services or advice, or a portion thereof, inures to **your** benefit (unless, with **your** consent and knowledge, such services or advice are provide Pro Bono).

This avoids any restriction in the type of activity covered, or whether a claim arose from accounting services or from an accountant-client relationship.

The second area of policy review is the exclusions section. There are a variety of situations that are excluded by a policy. Some of the most important, for the purposes of this article, are as follows:

[This policy excludes claims:]

Based on or arising out of (1) loss of, injury to, or destruction of tangible property; or (2) for loss of use of tangible property.

Certain non-traditional activities and services create what might be described as a *contingent property damage* liability exposure. If a professional liability policy contains such exclusion, it should be coordinated with a Commercial General Liability Insurance policy.

[This policy excludes claims:]

Based on or arising out of bodily injury, sickness or death;

Because of the contingent bodily injury liability exposure presented by certain non-traditional services, the exclusion should be restricted in scope. Coverage must be provided for bodily injury claims arising from professional services and this can be achieved by adding the words *unless such claims arise from professional services* to the end of the exclusion.

[This policy excludes claims:]

*Based on or arising out of the manufacture, lease or design of any product by any **Insured**, including any representation or warranty made with respect thereto or out of any product liability, product defect, mechanical or electrical breakdown;*

Many systems and computer-related services present an element of products liability exposure. Again, this should be coordinated with the Commercial General/Products Liability Insurance policy and any other indemnity agreements provided by vendors.

In conclusion, accountants may be entering into areas *where angels fear to tread*. Before embarking upon such ventures, you should ensure that you have a strong pair of wings and every protection, including the sword and shield of adequate and broadly worded professional liability insurance.