

AHERN Update

Should I Report FDCPA Claims To My E&O Carrier?

The risk management landscape for collection attorneys has become more difficult over the past few years, given the explosion of FDCPA lawsuits filed against them. A silver lining, however, is that the vast majority of these suits are frivolous, and can usually be dismissed in summary fashion.

In connection with law firm malpractice insurance however, these suits can present a trap for the unwary. It is vital that no matter how “bogus” or “innocuous” such a suit appears (or indeed turns out) to be, each and every one of them must be reported to the firm’s current (and potential future) insurer, for the following reasons:

1. They almost certainly qualify as “Claims” under the firm’s malpractice insurance policy, and these policies are universally written on a “claims made and reported” basis. If a known claim is not reported under such a policy prior to its expiration, the potential for subsequent coverage for the claim has been extinguished. An insurer will usually be well within its rights to deny coverage for a claim reported after the expiration date (even if that same insurer is providing coverage for a subsequent policy period).
2. Insurers consider knowledge of such suits to be “errors or omissions that might reasonably be expected to be the basis of a claim,” which is typical language in applications for malpractice insurance, and take a very dim view of failure to disclose all known FDCPA actions on the application. In the event of a claim the application will be closely scrutinized, and such omissions are generally easily discovered, with the likely unfortunate consequence of the policy being rescinded by the insurer as void ab initio due to fraudulent misrepresentation.
3. While the volume of these claims against collection attorneys has become unprecedented, the good news is that underwriters at reputable insurance companies are well aware of this changed environment, and are providing competitive terms to law firms who disclose and report multiple FDCPA actions, given the reality that the vast majority are groundless. On the claims side, these insurers will also often allow firms to self-defend FDCPA suits (up to certain thresholds), in recognition that the insured law firm is usually in the best position to knock out the spurious claims inexpensively and effectively.

AHERN Insurance Brokerage is an industry leader in providing customized insurance solutions for law firms. We assist over 4,000 law firms in multiple states with all of their insurance needs and are endorsed by five major bar associations.

For more information on how AHERN can assist your firm, please contact us.

T (858) 571-9030

E info@aherninsurance.com

We have seen otherwise savvy law firms fall into the trap of attempting to save a few thousand dollars in premium by failing to make full disclosure of these FDCPA suits to their insurers, with the unfortunate consequence of losing millions of dollars of coverage – please don’t let your firm be one of them.