

Circumstances – How to recognise a circumstance?

You may often wonder whether a particular fact, situation or circumstance is a 'fact which might give rise to a claim' under Professional Risks insurance. Circumstances can at times be obscure, so we have split them into two categories: obvious and less obvious types.

While this list is useful, it is NOT intended to be a comprehensive listing of all possible types of circumstances. CGU Professional Risks initially determines whether a circumstance is a 'fact which might give rise to a claim' or not by using the 'reasonable persons test' as prescribed by the courts. If CGU Professional Risks decision is later disputed then it will be further adjudicated, using the same test, by a court of law.

Furthermore, whether a circumstance is a 'fact which might give rise to a claim' or not will depend on each particular circumstance as it arises.

Professional Indemnity type circumstances

OBVIOUS TYPES

- Letter of demand from client/client's solicitor foreshadowing potential litigation.
- Telephone call from client/client's solicitor alleging failure of professional services.
- Abusive/angry customer demanding return of paid fees.
- Persistent complaints, either in writing or verbally, over a period of time about the standard/quality of the professional service provided.
- Major problem/mishap occurs with a job and Insured can foresee potential financial loss for the client i.e. a bridge designed by Insured collapses and questions are raised about the design.

LESS OBVIOUS TYPES

- Client makes a negative comment in passing about the adequacy of the professional services provided.
- Insured hears, via another source, about a client's strong dissatisfaction with service.
- A client's continued failure to pay the Insured's account arouses suspicions of their dissatisfaction of the service provided by the Insured.
- Newspaper / TV / Radio reports a claim against an Insured's client for work completed by the Insured - potential for a cross claim against the Insured.
- Insured discovers that the professional advice was incorrect and can foresee client suffering an economic loss.
- If the Insured is an insurance broker, the denial of a client's claim by an insurer.

Director's & Officers' type circumstances

OBVIOUS TYPES

- Letter of demand from a shareholder foreshadowing future litigation alleging breach of duty eg alleged breach of duty during allocation of shares.
- Telephone call from a shareholder / shareholder's solicitor alleging breach of duty or some other failure by Insured.
- An employee claims they have been defamed, harassed, discriminated against by the Insured.
- ASIC / ACCC commences official investigations into the Insured's conduct of the company's affairs.
- ACCC obtains a search warrant against the company's records.
- Occupational Health and Safety Authority commences investigations into a workplace incident.
- Shareholder makes allegations, either verbally or in writing, about the management of the company.
- Company goes into liquidation, voluntary administration or administration. Potential for creditor's action against the Insured.

LESS OBVIOUS TYPES

- Insured hears via another source of a shareholder's dissatisfaction over the management of the company, causing the shareholder financial loss.
- Shareholder makes comment in passing over the quality of management provided by the Insured at the annual general meeting. Possible grounds for a claim.
- Repayment problems arise with a financial institution or creditor.
- Insured discovers that the company's advertised financial projection was potentially misleading and could foresee potential financial loss for shareholders relying upon the advertised information.
- Insured receives complaints from a shareholder about a director/officer's performance, creating suspicions about their management competency.
- Insured fails to take out adequate insurance resulting in a financial loss for the company.
- Company starts receiving complaints from its customers that their advertisements are misleading eg Section 52 Trade Practices Act claim.
- Insured hears via another source of an employee's allegation of sexual harassment, discrimination or unfair dismissal by the Insured or an employee of the Insured.

- Verbal or written allegations of misleading/deceptive behaviour by the Insured.
- Letter of demand from creditor arrives foreshadowing future litigation eg insolvent trading.

Employment Practices Liability type circumstances

OBVIOUS TYPES

- Complaint by employee about the actions of a co-worker.
- Letter of demand from an employee or employee's solicitor or employee union foreshadowing future litigation.

LESS OBVIOUS TYPES

- Need to discipline an employee for workplace incident eg harassment, discrimination.
- Insured hears via another source of an employee's allegation of sexual harassment, discrimination or unfair dismissal by the Insured or an employee of the Insured.

