

21st Century Risk

A quick question ... does your practice face more or less risk today than it did five years ago?

I think most of you will agree with me without hesitation when I say, "MORE risk." There are several reasons I say this, but some stand out more than others.

First of all, since 2000 – on the heels of the financial reporting fiascos that we all remember associated with Waste Management, Anderson/Enron, WorldCom et. al. – I believe judges have been less likely to throw out cases against CPAs than they once were. There have been fewer motions for summary judgment granted and judges seem to require additional discovery before rendering decisions.

It seems that in almost every case we are required to perform extensive amounts of discovery before we can possibly reach a settlement. Of course, this entails subpoenas, depositions, hiring expert witnesses and countless hours of time spent by our member firms that happen to get sued. I think CPA Mutual's claims experience bears this out. Just look at these statistics on cases opened during the late 90s. Prior to 1998, we incurred expenses on an average of 32.45% of our reported claims. Since 1999, claims with expense paid average 48.54%. This is a 41% increase ... something happened!

I also believe these scandals placed targets squarely on the backs of CPAs. Plaintiff's bar figured out early that accountants were usually the last men standing, and CPAs carry insurance. And we all know what this equals ... deep pockets!

So, we're now litigating more cases, and fees and cost have also increased.

Second the labor shortage in the profession has added an increased burden on staff and management. I actually heard a plaintiff attorney say "there are too many "kids" doing audits and not enough senior level staff people to adequately supervise them." And I might add, he said this with glee in his voice!

Firms need to slow down and remember they only have so many qualified individuals to handle the work load. So before adding that new client, think long and hard and make sure you have the right people working the engagement. And when I say "right," I mean qualified. There is nothing worse than to hear one of your staff say at deposition: "I had no idea what I was supposed to do, and there was no one on the job to answer my questions."

Last but not least, how about electronic files? These includes not only your workpapers but also e-mails, text messages, instant messages, blogs and any other message stored electronically. Remember it's all discoverable (even personal home computers and phones used for business). And people write differently than they speak. Anderson wasn't found guilty of performing a bad audit – they were found guilty of a cover-up based upon one bad e-mail! And, if you are an old stogy like me, you do not realize how prevalent this mode of communication is among the younger generation. Can you imagine a plaintiff attorney getting their hands on a text message from a junior staff person telling a friend that the senior on the job has no clue what he or she is doing?

Not only might a document like this prove to be a “smoking gun,” electronic documents are extremely expensive to produce, and there is a very complex set of rules for their retention and safe keeping once a claim is imminent or threatened. This alone will require the help of an attorney.

Now more than ever you need to be extremely careful with your client retention and acceptance procedures. Make sure you have qualified staff at every level working on those engagements, and make sure your firm has a document retention policy in place that includes electronic documents. It’s probably also a good time to remind your staff that anything they write – regardless of its form – may be discoverable. It certainly makes a lot more sense for you to remind them now before they try to explain it to a judge and jury!