

Could This Happen to You? Professional Liability Claims and Lessons Learned



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Berkley Service Professionals

At Berkley Service Professionals, we transform uncertainty into opportunity so our clients can confidently build a better tomorrow. We do this by providing customized professional liability insurance solutions for miscellaneous nonmedical professionals. We are highly experienced underwriters whose expertise enables us to understand the inherent professional liability risks of service professionals and we excel at writing complex accounts. Berkley Service Professionals responds quickly with innovative coverage solutions that fulfill the needs of our brokers and their clients. We provide high-quality, results-oriented, expert in-house claims management. Our mission is to relentlessly protect our clients' work, reputation and dreams.



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Facilitated by



Diane P. Mika

Senior Vice President,
Risk Management Officer

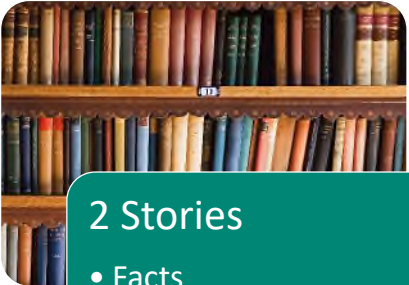
- 25+ years in professional liability risk management and loss prevention education
- BS in Organizational Behavior from University of San Francisco
- Certified Instructional Designer
- Has led in-depth claims studies to understand professional liability risks and has translated that into meaningful education programs



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Today's Program



2 Stories

- Facts
- Problems
- Resolution
- Lessons Learned



Q&A

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Claim 1: Don't Get Burned by Lack of Documentation

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Presented by



Mike Cecere
Vice President,
Assistant Claims Manager

- 30 years of experience handling Claims involving Professional Liability, Management Liability, and Financial Lines Claims, which included Insurance Agents, Real Estate Agents, Miscellaneous Professional Liability, Architects and Engineers and Construction Professional Liability, Directors & Officers, Employment Practices, and Fiduciary Liability Claims
- Currently handling and managing adjusters responsible for a wide array of small, mid-size and large Insurance Agents, Real Estate Agents, Miscellaneous Professional Liability Claims throughout the country



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Client/Claim Details

Area of Practice

- Insured was an agent providing commercial and residential property insurance

Parties Involved

- Insured – Insurance Agent
- Owner – Condominium Association

Allegations

- Alleged failure to place adequate insurance limits for a condominium association client



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The Claim

- In early 2022, the Agent obtained a fire insurance policy for the Owner with the same amount of coverage they had been in place for 19 years
- During that same 19-year time span, the Agent had made small increases to their wind/hail limits, but not the fire coverage
- Later that year, a fire destroyed the property
- The fire limits were paid, but were not enough to cover the damages as the estimated property loss was alleged to be almost \$10M



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The Complaint

- A lawsuit was filed alleging that the Agent failed to obtain adequate insurance coverage for the Owner
- The lawsuit further alleged that the Agent should have recommended increasing its fire insurance coverage limits to match the prior increases made to the wind/hail limits



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Liability Investigation

- Liability was problematic. As a general proposition, an insurance agent does not have a duty to advise its clients as to their coverage needs. Only to place the coverage requested by their client
- An exception to this rule could exist if it is determined that a special relationship exists



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Liability Investigation Cont'd

- Defense counsel believed that the 19-year relationship and placement of all of the Owner's insurance needs would constitute a special relationship
- In addition, the consecutive years of the same limits without more frequent recommendations to raise limits would rise to the level of a special relationship and fell below the standard of care



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Multi-factor Special Relationship Considerations May Include

- (1) Representations by the broker about its expertise
- (2) Representations by the broker about the breadth of the coverage obtained
- (3) The length and depth of the relationship
- (4) The extent of the broker's involvement in the client's decision making about its insurance needs
- (5) Information volunteered by the broker about the client's insurance needs; and
- (6) Payment of additional compensation for advisory services

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Alleged Damages Sought

- During the lawsuit, Plaintiff's demands increased to \$30M. It was discovered that the Owner was not just seeking the replacement cost value to rebuild, but that the damages also included a multi-story parking garage that didn't exist as part of the original building
- Therefore, it was determined that Plaintiff's damages were significantly inflated, and that the Plaintiff was trying to use this lawsuit to not only rebuild their condominium, but to significantly upgrade all facets of the building
- In contrast, our damages expert provided a written opinion as to the rebuild cost being \$5M

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The Resolution

- The claim was settled through voluntary mediation
- Legal expenses were six figures which included complete exhaustion of the insured's deductible
- A seven-figure settlement was paid from the insurance policy



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The Lessons Learned

- When agents have long term relationships with clients which could be viewed as a special relationship, it's important to ensure that there are QA/QC measures in place to periodically review clients' insurance portfolio and needs, and that the QA/QC measures are followed, and that conversations and insurance recommendations are documented
- The claim could have been avoided or mitigated, had there been more detailed documentation as to why the same limits were placed year over year for close to two decades

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Presented by



John R. Pico

Assistant Vice President,
Senior Claims Examiner

- 30+ years of claim handling experience in Professional Liability, Construction Defect, Commercial General Liability, Owner & Contractor Controlled Insurance Programs, Auto & Homeowners claims
- Previously worked with large insurance carriers
- Bachelor of Science in Business Administration Degree from California State University Northridge



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Client/Claim Details

Area of Practice

- Insured was a commercial property and personal residence manager

Parties Involved

- Insured – Property Manager
- Renters – Multi-Family Housing

Allegations

- Alleged class action lawsuit in a nationwide conspiracy to fix and inflate multifamily rental properties



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The Claim

- This was a class action lawsuit
- Plaintiffs allege that insureds colluded nationwide (1) to manipulate the market for multi-family residential housing by limiting supply; and (2) to fix inflated rent prices
- Tenants were being overcharging rent of rental units over several years
- Potential exposure ranged from \$0 to \$5M with a midpoint of \$2.5M



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The Complaint

- A complaint was filled alleging users of RealPage delegated their rental price and supply decisions to a common decision maker, for the purpose of eliminating competition and keeping rental prices high
- Plaintiffs' position is visceral appeal to jurors
 - Widespread anger about the cost of housing
 - People's feelings about Artificial Intelligence ("AI") to generate recommended prices
 - The distrust of "big business"



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Investigation

- The complaint alleged that defendant raised rents in varying amounts each month with various increases and maintain rents 7% over market rate (SAC ¶ 311). They explain this increase cannot be explained by supply and demand but instead must be by collusion.
- RealPage's website provides that it services over 24 million units worldwide. This seems high given that Plaintiffs allege RealPage was pricing 3 million units in 2017 and 4 million units in 2022. Let us assume RealPage is used by managers to price 5 million units nationwide. If rent was unlawfully increased by \$100 per unit via use of RealPage, plaintiffs collectively allege \$50 million in damages.
- These damages can be trebled, and fees can be added, as noted above

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Further Investigation

- Our recommendation is an initial offer of \$100K per defendant, and authority up to \$250K
- Despite numerous forthcoming motions to dismiss on various grounds, we do not expect this case to be dismissed
- Finally, we note that some defendants have given their counsel authority up to \$500K
- Hard to predict how this mediation will go
- Discussed case with the insured and they have already given their consent of their deductible amount

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Sherman Antitrust Act

- Insured faced significant exposure for several reasons
- First, the complaint alleges a class action potentially covering most of the rental units they managed for several years
- Second, the Sherman Act mandates treble damages, meaning any proven loss or increased rent would be tripled
- Third, under the Sherman Act, joint liability exists without the right of contribution, so a paying defendant cannot seek reimbursement from a non-paying defendant
- Potential liability for the full amount of class damages proven against all defendants, with straight damages tripled

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The Resolution

- Plaintiffs divided the group of 32 into 2 groups: the “top 5” and then everyone else. Insured is in the remainder 27.
- The demand for the remainder 27 is a total of \$160 million
- Legal expenses were roughly \$630K
- Insured paid its deductible of \$50K



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The Lessons Learned

- Sharing confidential information, even if obtained through pricing software, with the public or competitors is dangerous and can be seen as extortion.
- There are multiple class action lawsuits related to rental price fixing, largely due to the sharing of confidential information.
- Defending class action lawsuits are extremely expensive and can burn through policy limits.

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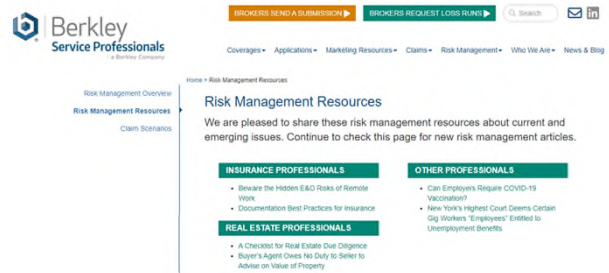
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Summary

- Berkley Service Professionals (BSP) offer claims made and reported professional liability insurance for licensed non-medical professionals and miscellaneous service exposures
- BSP products currently include: Insurance Agents/Brokers E&O, Real Estate Agents/Brokers E&O, Manufacturers E&O, Miscellaneous Services E&O and Excess E&O insurance



Available Risk Management Resources on [BerkleySP.com](https://www.berkleyalliance.com)

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A blue-themed slide with a background image of a modern building. At the top, there is a white box containing the Berkley logo and the text 'Thank you!'. Below this, the contact information for three individuals is listed in three columns. The first column is for Diane P. Mika, the second for Mike Cecere, and the third for John R. Pico. Each column includes their name, title, email address, and phone number.

Thank you!

Diane P. Mika Senior Vice President, Risk Management Officer dmika@berkleyalliance.com 831.293.6243	Mike Cecere Vice President, Assistant Claims Manager mcecere@berkleyalliance.com 212.822.3394	John R. Pico Assistant Vice President Senior Claims Examiner jpico@berkleyalliance.com 213.417.5476
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