



MALPRACTICE ALERT!

OBLIC

August 2002 • 1650 Lake Shore Drive • Columbus, OH 43216-2708 • 614/488-7924 • Ohio Wats 1-800-227-4111

Ohio Bar Liability
Insurance Company

PRIVACY LAW – FTC EXEMPTION FOR LAWYERS DENIED

The Gramm-Leach-Bliley Act (the "Act") requires that certain business that provide financial services to consumers must provide a "privacy notice" to those consumers at least once per year. Attorneys engaged in certain areas of practice for individuals, not businesses, may be considered as falling under the Act's definitions. Those areas of practice may include tax preparation and advice, real estate or leasing transactions, collection work, and other financial planning advice or transactions. Unfortunately, the areas of practice that may fall within the scope of the Act are not crystal-clear at this time.

The American Bar Association (ABA) requested that the Federal Trade Commission (FTC) exempt lawyers from the requirements of the Act. In a letter to the President of the ABA dated April 8, 2002, the FTC advised the ABA that it lacked the authority to exempt lawyers from the requirements of the Act. The ABA had pointed-out that lawyers were already governed by rules requiring confidentiality of client information, making the notice requirements of the Act unnecessary, and a waste of time and effort. Such arguments were not persuasive.

The ABA did respond that it intended to discuss the issue with Congress, and also "consider its judicial options."

The FTC does have a "FAQ" website regarding questions about the Act at www.ftc.gov/privacy/glbact/glb-faq.htm (no period follows the htm in the web address). The ABA also has a web site found at www.abanet.org/poladv/glbfactsheet.html.

Once again, the Act only applies to those dealing with individuals regarding non-business matters. OBLIC published prior information about the Act and the notice requirements in the July 2001 edition of "Malpractice Alert!" At this time, attorneys engaged in the practice areas mentioned above should be providing a privacy notice to clients on an annual basis (assuming there is an ongoing relationship with the client).

* * * * *

CLE COUPON NOTE

All OBLIC insured attorneys, starting with policies effective September 1, 2001 and thereafter, receive a coupon good for three hours of free CLE for programs sponsored by the OSBA CLE Institute. The coupons may also be used for a discount off the cost of such programs that are greater than three hours in length.

These coupons were included with policies mailed until late May, 2002. The procedure changed after that time. The coupons are still mailed at the time the policy is mailed, but the coupon(s) are now sent as a separate mailing.

COVERAGE TOPIC: LIMITS OF LIABILITY

The OBLIC policy and declarations contains two limits of liability. The one limit shown on the declarations page is the per claim limit for “all claims arising out of the same, related or continuing **Professional Services.**”

This limit is always lower or the same as the limit shown in the declarations as “aggregate per policy period.” The aggregate limit is the maximum amount available to pay all claims made and reported during the policy period, or made during any extended reporting period of coverage (often referred to as “tail” coverage).

The “Conditions” section of the policy further states that “The limits of liability stated in the **Declarations** as applicable to “all **Claims** arising out of the same, related or continuing **Professional Services**” is the limit of the Company’s liability for all money damages including interest, arising out of the same or related **Professional Services** without regard to the number of **Claims**, demands, suits, proceedings or disputes.”

If the limit for “all claims arising out of the same related or continuing **Professional Services**” is the same number as the “aggregate” limit, then the same amount of coverage is available, whether there is one claim or more than one claim made during the policy period.

Issues may arise where the aggregate limit is greater than the per claim limit of liability. For example, in a recent Florida case, a former client contended that a lawyer failed to sue several medical defendants, thus, had multiple claims against the lawyer, subject to the aggregate limit of liability. The appeals court restricted recovery to the per claim limit because the claims arose out of the same or related wrongful acts of the lawyer. Hence, there were not multiple claims to be paid under the aggregate limit of liability, *Eagle American Ins. Co. v. Nichols*, No. 4D01-172 (Fla.App. 03/13/2002).

Policyholders may wish to review their limits of liability from time to time to be certain that the limits of liability, particularly the limit “for all claims arising out of the same, related or continuing **Professional Services**” is adequate to cover potential exposure.

* * * * *

The contents of this newsletter are provided for informational purposes only, and should not be construed as providing legal advice. Copyright 2002 Ohio Bar Liability Insurance Company