

BUSINESS DEVELOPMENT PROPOSAL



Title: A Professional Services Claim Mitigation Plan
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I. OBJECTIVE

A business development proposal for a plan concerning a proprietary process and method for claim mitigation concerning the delivery of certain types of professional services.

II. PURPOSES

- 1) Provide a means for the objective assessment (in the case of carriers) and self-assessment (in the case of attorneys, law firms, and other professional service trades) to assess the risks and possibility of future claims,
- 2) Provide affirmative tools for professional service providers to acquire information that affords an opportunity to handle potential customer dissatisfaction issues internally before they ripen into actual claims,
- 3) Provide a potential compliance-based measuring tool for insurance carriers, with the use of metrics as a tool, to evaluate future risk of claims arising with the customers of professional service provider insureds,
- 4) Provide an additional tool for the assessment of risk in the underwriting process of certain lines of business insurance or insurance market segments,

- 5) Provide a proprietary process that, if implemented, has the potential to foreclose the possibility of particular future claims,
- 6) Minimize the risk of claims in the delivery of professional services provided to customers or clients that involve the successive, yet discrete, delivery of services,
- 7) Potentially reduce the costs of coverage for certain professional service providers, or professional trade market segments, with potential cost savings for the insureds,
- 8) Potentially reduce the number of claims and lawsuits based upon professional negligence,
- 9) Assist professional service providers in the delivery of superior quality professional services, and
- 10) Provide certain customer incentives that aid in achieving and implementing the foregoing purposes.


III. DEVELOPMENT PROPOSAL

This "value added" proprietary process Business Development Concept ("BDC") (see BDC description on our "Services" webpage) and related proposal is for a plan that seeks to reduce the frequency of claims involving professional negligence. While originally conceptualized as a proprietary process for attorneys, it may be applicable to

other professional service providers, as will be discussed, where there is a delivery of closed-ended professional services.¹

Professional negligence claims, particularly those involving attorneys, can be both complicated and expensive for several reasons. First, because the delivery of professional services involves a professional standard of care, exceptional costs are often involved to retain the necessary experts to assess when and how a breach of the professional standard of care may have occurred.

Second, the delivery and defense of an attorney's professional negligence case at trial can be particularly problematic as it involves what is often referred to as "a case within a case." So described because the attorney's alleged errors and conduct in the original or underlying client matter, the first legal case, are reviewed and on



Legal malpractice can often arise from less than clearly obvious issues. According to a relatively recent survey, insurance carriers reported conflicts of interest as being one of the leading causes of legal malpractice claims.

Source: Ames & Gough's 12th Annual Survey of Legal Malpractice Claims.

¹ For reference, "closed-ended professional services" means those services that do not continue indefinitely on an ongoing basis while involving the same subject or issue. A contrasting example of open-ended professional services would be medical services provided by a primary care physician in the ongoing course of patient treatment and care.

trial within the second legal case that forms the basis of the professional negligence lawsuit. All elements of a negligence claim must be established and, because damages are partly determined by a better financial result that would have followed with a different course of action, attorney professional negligence cases often delve into the "should of" and "could of" with respect to the attorney's conduct and alleged errors.

Third, the greater the complexity of the professional services that are under review, there is exponentially greater cost increase in the handling of a case. For example, explanations of complex legal standards and why an attorney undertook a particular course of action (or biological functions and medical procedures in the context of a medical malpractice case) are going to require more time to explain and increase legal expenses, both in preparation time and in delivery at trial.

Given these issues, professional negligence cases are expectedly more costly than other types of non-commercial litigation cases because they involve greater amounts of time, require expert witnesses, and the subject matters can be complex due to the nature of the earlier provided professional services.

While not conceived with medical service providers in mind, this BDC and development proposal could be applicable to doctors, with adapted variation, where medical services are provided with limited engagement by specialists or where open-ended professional services are concluding with a termination of the doctor-patient relationship. Notwithstanding, as this plan was conceived for situations where

professional services come to a definitive conclusion, it will likely find its greatest utility where attorneys, architects, and engineers are providing services to non-institutional clients.

Returning to attorneys and law firms as the primary group for which this BDC was conceptualized, California law provides some of the most stringent rules and regulations with respect to an attorney's ability to minimize or avoid liability in the delivery of professional services to a client. This proprietary process BDC, if engaged, would be developed within the landscape and contours of California regulations applicable to California attorneys as the primary group for whom this BDC was conceptualized. Two alternative methods for implementation are possible; one implementation model specific to self-assessing professional service providers and one implementation model specific to insurance carriers acting in a risk assessment capacity. That said, the two models may be implemented with overlap to achieve both the self-assessment and risk assessment purposes. This proprietary process professional services claim mitigation development plan may then be adapted and scaled for potential implementation in other jurisdictions where restrictions on limiting professional liability are less stringent.

As mentioned, this BDC and development plan may be useful to other professional services providers. The adaptability of the proprietary process will at least be briefly discussed in light of its possible application to other professional services providers, but there may be considerably less utility within other trades as discussed. Notwithstanding its original conceptualization for application to the delivery of legal services, this

proprietary process business development plan may be of greatest interest to insurance carriers.

IV. FEE REQUEST FOR DEVELOPMENT

The factors involved in the pricing of this BDC and the development plan include:

- The proprietary nature of the BDC and the development plan,
- The novelty of the BDC and the development plan,
- The BDC and proposal's "value added" classification attending the potential significant savings from professional negligence claim avoidance,
- The potential for professional service providers to self-resolve client problems before they ripen into possible claims,
- The potential benefits and usefulness to carriers as a risk assessment tool for renewing policies or determining policy premiums,
- The adaptability and scalability of the proprietary process for use in other domestic jurisdictions,
- Potential long-term stabilization of the costs of insurance premiums through risk reductions attending successful implementation of the proprietary processes and development plan, and
- The additional collateral benefits listed within the "purposes" section.

Based upon the foregoing factors, the requested fee for the development of this BDC, with explanations of the mechanics of its application, is \$4.5 million. Notwithstanding the foregoing, if any one particular carrier, general counsel for a carrier, or law firm desired to lead a coordinated effort to fund the development of this



Ames & Gough's 12th Annual Survey of Legal Malpractice Claims also revealed that 10 of the 11 surveyed carriers contributed payments toward the settlement of a claim in excess of \$50 million within the proceeding two years.

Source: <https://amesgough.com/law-firms-see-u-s-legal-malpractice-claims-costs-soar-as-they-rush-to-cope-with-rapid-change/>

BDC or, alternatively, simply wanted to buy-out this BDC and development plan, the requested fee for this BDC is \$4 million, which allocates a \$500,000 discount or fee to the carrier, counsel, or law firm that may want to enter into a contract to act as the “coordinator point of contact” and undertaking the funding coordination function.

While the requested fee is not insignificant, given the above identified factors, the costs for the development of this BDC with example explanations is insignificant in relation to potential long-term expense savings concerning professional services claim mitigation. As this proprietary process BDC and related development plan has potential industry level applications with further possibility of cross-industry uses, it may be suitable that the costs for the development of this proposal be shared by multiple carriers, law

firms, attorneys, and – to a lesser extent – other professional services providers. With shared development expenses, like insurance itself, there is both a shared cost of potential benefits and a shared risk concerning any obstacles of implementation or for use in specific professional trades.

V. THE DEVELOPMENT PLAN

If engaged, this business development proposal will be further revised and worked up into a development plan that will include:

- Identification and explanation of the proprietary process,
- One or more examples with explanations concerning its mechanics of use and operation,
- Subject to possible exclusion, example model documents that might be used to implement the proprietary process,
- Explanations and/or diagrams concerning the implementation model applicable to would-be self-assessing professional service providers,
- Explanations concerning the use of the proprietary process by risk assessing insurance carriers,² and

² As mentioned, the two models may be implemented with overlap to achieve both the self-assessment and risk assessment functions. However, because of the potential conflicts of interest disclosed below and the possibility of a new business to handle these merged functions and operations, the possibilities concerning carrier-side implementation will not be addressed unless one or more carriers specifically engages the further

- Additional information that, in our discretion, is believed to be beneficial for an understanding of the development plan.

VI. DISCLAIMERS & DISCLOSURES

1. Should this proprietary process business development proposal be funded or engaged by both insured professionals, on the one hand, and insurance carriers, on the other hand, there is the possibility of a potential conflict of interests. Specifically, the additional referenced resource tools intended to assist underwriters and insurance carriers with risk assessments in policy renewals may run contrary to the interests of certain insured professionals. However, these potential conflicts of interest, if they exist, appear to bear a direct correlation to the degree that insured professionals may deviate from the required standards of care for their given professional trades or might otherwise seek to avoid the possibility of a carrier-initiated risk assessment protocol.

2. Should this proprietary process business development plan be engaged, you understand and agree that we are not engaged in the practice of law. Although certain references may be made to legal citations for context and understanding, no advice is being offered or given as to the suitability of the business development proposal for any

development of this business development concept. However, information concerning how the proprietary process might be used as a risk assessment tool will be discussed.

particular person or particular business entity. While the business development proposal may include exemplar materials for how this particular proposal might be implemented into an actual action plan, no recommendations will be offered, made, or provided concerning its suitability for that or any other particular purpose. Should this concept be engaged for full development, any and all persons contributing towards any payments, and all other persons who might review it, should consult with their own legal counsel to determine if the end resulting development plan may be suitable for their own particular needs and circumstances.

3. In deciding to engage the formal work-up of a Business Development Concept as a development plan, no assurances or guarantees are provided that the proprietary processes or development plan to be provided have not been previously conceived, contemplated, considered, or even rejected by knowledgeable specialists within the particular industry to which the Business Development Concept relates. While effort has been made to provide accurate information for evaluation, in deciding to engage the formal work-up of a Business Development Concept into a development plan, you understand and agree that there is the possibility, even if remote, of unforeseen or unanticipated circumstances that may render a development plan incapable of being implemented or possibly useless. **Please refer to the Terms of Service on our website for additional important information.**

Thank you for considering SEE Consulting to potentially assist you with further developing or improving your company or business operations.

Sincerely,

Mr. Cameron Mostaghim