

Looking Beyond the AICPA for Effective Loss Prevention

The AICPA Plays an Important Role

The AICPA and its for profit subsidiary, CPA2Biz, are invaluable lobbyists for CPAs. In front of legislative, executive and judicial branches of government, they serve a key, if not irreplaceable, role. The AICPA is also an advocate for advancing engagement quality. Many committees exist to achieve this goal. This effort can lead to lowered claims levels. It also uses its committees and publications to advise professionals about existing or impending garden-variety risk exposures.¹ These committees provide important information. In these respects, the AICPA plays a key role in loss prevention.

In Key Areas, However, the AICPA Cannot Provide Truly Objective Loss Prevention Advice

Three reasons exist why the AICPA/CPA2Biz cannot provide truly objective loss prevention advice in certain areas:

1. It is in the nature of being a lobbyist that one has to act and teach in a manner that is consistent with the positions one has staked out. Certain lobbying and advocacy positions adopted by the AICPA have effectively precluded it from advising professionals as to the true nature of certain exposures. For example, any experienced person in the malpractice field knows that practitioners almost always get sued when they fail to find a fraud. And these suits almost always settle for significant amounts. For decades, the AICPA has been advising practitioners that they are not in the business of detecting fraud. And jurors have been asking, “*if not, then what are they there for?*” See more on this issue below.
2. It is a major promulgator of standards governing the profession and given the regulatory rules in place that give those standards the force of law, the AICPA’s promulgations create liability exposure. Nearly every new standard causes an expansion of the liability exposure to professionals. As a promulgator of standards, it does not have incentives to articulate what those increased exposures may be. Taking the fraud detection example again, SAS 81 did not in fact mitigate exposure to non-detection of fraud but made it more difficult to defend against.

¹ Garden-variety claims are those that arise from the failure to timely file a tax return or failure to audit inventory/receivables or fixed assets. Little dispute exists about the nature of the professional’s liability in garden-variety matters.

3. The AICPA/CPA2biz is a major developer, advocate and accreditor of new services and specialty designations. As an advocate for new designations and new services (which is a good thing) the AICPA has created inherent disincentives to highlight the potential liability exposures that might derive from these activities. This is especially true in those engagement areas where it has a financial, regulatory or advocacy stake in the outcome. As an example, consider that the AICPA is working hard to promote new and worthy designations for its members, such as the ABV designation.² Successful applicants can expect to increase their revenue stream as a result of their ABV accreditation. The AICPA will increase its revenue stream as well, by promoting the designation and receiving the fees associated with accreditation, conferences, articles, etc. Conversely, the AICPA will not be inclined (because it would be contrary to its own financial interests) to inform members that the provision of business valuation services may involve significantly increased liability exposure. This is not to say that the AICPA has not made efforts to assist practitioners in understanding their exposures, but that is not the same as being direct about what one is getting into.

Certain Loss Prevention Services Must Be Provided By An Independent And Objective Body

Our mission is to provide all accounting professionals with direct, unfettered, and objective information about their liability exposures. We believe this is information and a particular kind of advocacy that every firm needs. We do not have any inhibitions about telling you what our research finds. In fact, our main objective is to inform you of the risks involved in your practice and to deliver resources that will assist you in avoiding them. We have no other conflicting interests. See also, [Reasons Why Subscribing is a Must](#).

The Expectation Gap And The True Nature Of Your Liability Exposure

Consider that one of the reasons Andersen failed is that it did not even remotely understand the reality of its liability exposures³. The reality is that the gap between the professional standards promulgated by the AICPA and the expectations of civil juries concerning the duties accounting professionals owe their clients and third parties, continues to grow.⁴ We started writing about this new “expectation gap” more than two years ago after spending much of the previous decade preparing malpractice cases *against* practitioners. It had become obvious to us that most practitioners did not

² No negative connotation should be drawn from the fact of the AICPA creating new designations. I am one of those ABV designees and am happy that the AICPA initiated the process.

³ While seemingly an obvious statement now, many larger firms still do not understand their exposures. They mistakenly think Andersen’s failure was about a technical matter, SPEs.

⁴ The duty of care that accountants owe their clients (and possibly to some third parties) as established by the court system is that degree of care, skill and competence that would be exercised by a reasonably competent member of the profession under similar circumstances.

understand the true nature of their exposure nor that with new services, standards and requirements the expectation gap was expanding.

Enron and Andersen as the Quintessential Example

In commenting to USA Today, the Chicago Tribune and the Wall Street Journal within days of Enron's failure, and in spite of many protests, we stated directly that Andersen's entire future was at stake. This was plainly obvious to us, but not to the profession at large. Why? Because while the profession had previously been in a pitched battle to protect its right to provide all kinds of services, including client advocacy services, it did not understand that its real problems were not going to arise from its compliance, or lack thereof, with SEC regulations, but with a court system that may very well have seen things much differently. Anyone who has seen even a few juries deal with accounting and conflict issues would have come to the same conclusion.

We believe that most practitioners, even the brightest, really do not understand the nature of their current and emerging liability exposures. This issue is not a matter of intelligence, but the perspective from which one sees things. When you are in the middle of something, it is often difficult to be able to look at the entirety of it. Supporting this assertion are the comments we get when giving loss prevention presentations. "Until your presentation I never really understood the true cause and basis of my liability exposure," or "We have to do some things differently," or "I am really pleased I had my staff attend this presentation because we cannot operate defensively with only half the information we need." While these thoughts are anecdotal, the people giving us the comments were all experienced practitioners.

Complying with Professional Standards

The simple fact is that practitioners are used to thinking that if their engagements satisfy professional standards, they will satisfy legal liability standards. While true in many respects, this belief can be false, most readily in higher risk circumstances – precisely when a practitioner needs this belief to be true. It is almost always news to practitioners when we explain the many circumstances where they need to be performing new and/or different steps in an engagement in order to protect themselves.

The Fraud Debate

In the aftermath of Enron, WorldCom, etc., one of the hottest issues is whether CPAs should be accountable for their failure to detect fraud in an audit, review or even compilation. The AICPA has taken the position, for good reasons, that a CPA firm is not responsible for detecting fraud. It has done so in public statements, before legislatures and in courts. To take any other position would endanger efforts to codify such liability restrictions and provide practitioners with an effective defense.

Contrary to the AICPA's public statements on this issue, we have made a point of informing practitioners that they should expect to be held accountable for detecting fraud,

because by-and-large, people in jury boxes will find that it was the accountant's duty to do so. Whether we like it or not, that is the legal reality, and that is why many of our resources are directed at giving you new tools for detect fraud and, at the same time, give you evidence to protect yourself from malpractice claims.

Our Mission

One of the reasons we founded www.AccountingMalpractice.com was to deliver objective and unfettered loss prevention and risk assessment information to those professionals who understand its importance. To our knowledge, we are the only independent group in the U.S. that is truly addressing this need. And with an increasing diffusion in standards and standard-setters, we believe this need is going to become even more acute. Don't take unnecessary chances with your career... [Subscribe Now](#).