What You Need to Know About Your Lawyers Professional Liability Coverage

You work hard to build your practice and your firm. There's no sense in risking it all if a client should be unhappy with your work. Lawyers Professional Liability (LPL) coverage protects you in the event you are the subject of a claim for damages arising from your rendering of (or failure to render) legal services.

The cost of such a policy can vary, as can the quality of coverage. This article will help you understand how your policy functions, and how it compares to others.

The Basic Insuring Agreement

In a nutshell, your policy will cover you for claims arising from Wrongful Acts that occur during the covered time period and reported to the carrier in accordance with policy provisions.

What are Wrongful Acts?

In one of our policies, Wrongful Act is defined as "..any actual or alleged act, omission or Personal Injury arising out of Professional Services rendered by an Insured or by any person for whose act or omission the Insured is legally responsible."

"Professional Services" in this policy include services rendered as lawyer, mediator, arbitrator, and many other functions incidental to your relationship with your clients.

This particular policy's definition of Wrongful Act is relatively broad. This is due to the inclusion of Personal Injury, which is not always provided, and the extension of coverage to others for whom you are responsible.

Claims-Made (and reported) Coverage

As with most Professional Liability coverages, LPL is written on a claims-made basis. This means that claims must be made against the insured while a policy is in force, and must be reported to the carrier currently insuring the firm, regardless of when the Wrongful Act took place. This is in marked contrast to the typical "occurrence" form used in most General Liability policies. In an occurrence form, the claim is reported in accordance with the carrier covering the insured at the time of the "accident" without regard to when the claim is made against the insured.

Most policies also contain a reporting provision that requires the claim be reported to the carrier during the policy period, or in some cases during an automatic grace period of 60 to 90 days.

It is preferable, of course, for a policy to be "pure claims-made" with no restriction as to the time of the reporting to the carrier. However, pure claims-made policies are rare.

When is a Claim Made?

Interestingly, what constitutes a claim being made against the insured is sometimes an issue, and there are policies that are preferable, and policies that are more restrictive even in this regard.

Many policies provide that a claim is "first made" against the insured at the time any insured first receives notice of the Claim. The problem with this is that a lower level clerical person can receive a demand letter and put it in a pile of mail, or can otherwise fail to recognize the urgency of the matter and get the claim into the hands of someone who can properly report it to the carrier. However, since all employees of the firm are "insureds", service or notice upon any employee constitutes receipt of the Claim by "any insured" and thus triggers the reporting requirements.

Preferable wording would provide that notice of the claim must be received by an executive officer, partner or director of the firm. This wording is rare, but can make or break a coverage situation.

Retroactive Date

Many policies will restrict coverage to Wrongful Acts taking place after a Retroactive Date. This restriction may be imbedded in the policy wording, or it may be added by endorsement. The Retroactive Date is usually the first date upon which the firm incepted continuous coverage. As policies are renewed over time, this date should remain static. It will generally change only if the firm runs into severe troubles and coverage is moved from a standard carrier to a non-standard or distressed carrier that wishes to insulate itself from past actions.

Due to the additional exposure caused by covering a growing number of past acts, many carrier increase premium over the first four or five years of coverage, all other things being equal. This is called "step-factoring". An insured's coverage is generally considered mature after four or five years, and the premium levels off. Some carriers do not follow that pricing model and keep premium relatively flat regardless of the additional exposure created by several years of retroactive coverage.

Limits of Liability

Law firms carry a variety of limits, some as low as $250,000 per claim, usually with a $500,000 aggregate. In choosing the appropriate limit for you, you must look at two important criteria: What is your maximum probable loss? What do you have at risk?

If you work on high-value cases, your exposure is necessarily larger. If you have several clients and could have multiple claims in a policy year, you will want higher limits. If the firm holds significant assets that could be attached, or if you have significant personal wealth, you will want to purchase higher limits.

It is very important to note that in most cases defense expenses will erode the limits of liability. This is very common in Professional Liability coverages, as more than 90 cents of every claim dollar is spent on defense, versus indemnity. Carriers seek to control their costs by including a limitation on defense expenses in their actuarial calculations.

Consent to Settle

Even though the insurance carrier controls the defense of any claim made against you, carriers generally commit not to settle a claim without your consent. This is typical because of the potential reputational harm that could accompany a settlement. However, the carriers also reserve the right to require that you pay any defense costs or excess settlement amounts after they have proposed a settlement and therefore encourage you to agree with their settlement proposals.

Supplemental Coverages

Some of the preferred carriers will offer coverages for additional causes of loss beyond the rendering of legal services. These additional coverages can include defense of actions by state licensing or similar boards, loss of earning when participating in defense of a claim, privacy liability sublimits, or Employment Practices Liability sublimits.

Some carriers also provide significant risk management information and assistance, some of which may qualify for CLE credits.

Preserving Your Reporting Capabilities

Because LPL is written on a claims-made basis, should the day come that you no longer carry a policy, you will still want to be able to report claims to your most recent carrier. This capability can be preserved for a short time by buying an Extended Reporting Period (ERP). Most policies will allow you to purchase an ERP of one or three years for a multiple of the annual premium. This option is usually available no matter who cancels or nonrenews the policy (you or the carrier). Some restrictive forms may only allow an ERP to be purchased if the carrier cancels or nonrenews, and if you anticipate possible termination of coverage in the near future, you will want to make sure you purchase a policy that allows you to trigger the ERP.

Predecessor Firms

It is not uncommon for law firms to evolve over time, and it's of the utmost importance that you not lose coverage in moving from one firm to a combination with another and back again. If a firm is purchased, including its liabilities, by another firm, carriers are more than willing to provide what is called "Predecessor Firm" coverage to the previous firm. This eliminates the need for the old firm to purchase an extended reporting period,

and provides the opportunity to reporting capability to continue in perpetuity, as long as the go-forward firm remains insured.

One thing you must keep an eye on is how Predecessor Firms are treated in any given policy. Some policies include "Predecessor Firms" as insureds, and define them within the policy. Others need to add Predecessor Firms by endorsement and schedule the specific firms to be covered. If you have a policy which includes them automatically and move to a policy that does not, you must remember to have them scheduled.

What Impacts Pricing and Underwriting?

Lawyers Professional is underwritten and priced based on many factors. One of the main factors is location, and California is generally considered an unfavorable venue. There are several LPL carriers that do not write in the state. Those who do write business in California charge significantly more premium for a given risk than they would charge in another state. To the extent your practice serves clients based in other states, you may enjoy some pricing relief.

Another major factor in pricing is area of practice. Defense attorneys of all sorts tend to have lower pricing than plaintiff attorneys. Attorneys that specialize in what are considered "high-risk" areas of practice – securities, entertainment, intellectual property, class-action or medical malpractice plaintiff – generally are surcharged significantly, and sometimes cannot find coverage in the standard market. These areas of practice lend themselves to both claim frequency and claim severity, and the carriers have responded accordingly.

Some carriers calculate their rates based on the firm's past revenue, some on projected revenue, or a combination of both, and others calculate their rates based on number of attorneys. "Of counsel" are frequently included in these counts.

What Carrier is Right for You?

Carriers have varying appetites based on size of firm as well as areas of practice. For solo firms, there are only a few markets that are broadly available. Others are controlled by program administrators, some of whom are quite stable, and others might be worthy of additional scrutiny.

Additional markets are available for firms with three or more attorneys, even more when the attorney count reaches five, and a multitude are available for firms with ten or more attorneys.

The non-standard market (carriers that specialize in firms with claims, complaints, or high-risk areas of practice) tends to have an appetite for firms regardless of the number of attorneys.

California has one mutual insurance company (owned by the policyholders instead of by stockholders), which has been in operation since 1978. This carrier has several specialized programs and presents a relatively stable option for firms of all sizes. Mutual insurance companies, however, do tend to be more solid than commercial companies and do not explore coverage enhancements as readily.

There are several commercial carriers operating in the state of California. Zurich, CNA, Carolina Casualty, Great American (now Darwin/AWAC) and Navigators, among others, offer preferred programs. They have all been writing LPL for quite some time and are good, stable, financially sound companies with exemplary claims payment records. For larger firms, ACE, Liberty, Arch, Axis, and others come into play.

For non-standard firms, James River, Evanston, Landmark, and London are dominant players.

All of these carriers can provide adequate protection and relatively reasonable pricing. When it comes time to purchase your insurance, you will want to compare policy provisions, such as those outlined above, along with pricing, to decide which offers the best value for you.

By Seth Kamlet, *CIC, CRIS* and Chris Christian *CIC, RPLU*. Seth is the CEO of Unique Risk Management, LLC and can be reached at the office at (949) 305-5577 x203.

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