

The 'PRICE' is right

Navigating the maze of legal professional liability insurance

If you have the task of handling your law firm's professional liability insurance, you are accustomed to calls, mailings and advertisements promising to save money on professional liability coverage. While saving money is important, there are several other considerations that need be evaluated before selecting an insurance company, agent and solution.

Many in our industry caution firms to not be pure "price buyers," but in my opinion, lawyers' professional liability is all about price. However, my definition of price does not equate to premium. Rather, price is the total cost of insurance to a law firm and the definition of it can be encompassed by its acronym:

- P** The premium that your firm is charged
- R** The retention or deductible that your firm stands to pay in the event of a claim
- I** Intangible costs associated with a claim or problem
- C** Actual hard costs associated with a claim
- E** Extra expenses such as the time and money incurred by a firm in the event of a claim

Ultimately, a law firm should choose an insurance solution that is the lowest priced solution possible.

Things to look for

As the foregoing suggests, the total cost to a law firm attributable to professional liability is driven primarily by claims. In the event of a claim, a firm faces payment of a deductible, payment of indemnity expenses in the event that the claim is not covered by an insurance policy, or the indemnity expenses exceed the amount of insurance purchased, time and money spent working on the claim, as well as the loss of goodwill associated with a claim.

As such, the most important action that a law firm can take to reduce the price of insurance is to take steps to mitigate against claims, ensure that the firm's professional liability insurance coverage is as broad as possible, and select an agent and an insurer who are knowledgeable and stable.

In order to mitigate against claim activity, a law firm must maintain strong risk-management policies and procedures. The most frequent source of claims stems from a poor client selection and intake process.

Law firms should make sure that they select clients that will pay on a timely basis, have realistic expectations and that do not pose a conflict of interest against current or former clients of the firm. Firms should require new clients to execute a comprehensive engagement letter that sets forth the scope of services and duration of the engagement.

Moreover, law firms should undertake a conflict-of-interest check prior to commencing work for the client. It should include the name of the client entity, names of principals of that entity, subject matter and adverse parties. Requiring a retainer and/or running a credit check is a good idea, too, and if the firm engages in litigation work, a dual-docket system is a must. The docket systems should be independent, meaning that entries are made by at least two people on two separate calendars.

After the firm has been officially engaged, the responsible attorney should keep in regular written contact with the client and should advise the client of all pertinent developments. If a client does not pay bills timely, attempt to resolve the dispute amicably before considering more drastic measures. Keep in mind that most suits for fees against

oswald
companies

David Kramer, Esq.
Vice President, Practice Leader
Lawyers' Professional Liability
248 433-7604
dkramer@oswaldcompanies.com

www.oswaldcompanies.com

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a client result in a counterclaim alleging, among other things, professional negligence.

Going past the general

Insurance is nothing more than a promise to pay based on the terms and conditions of the insurance contract. As such, it is of critical importance that the insurance policy is drafted as broadly as possible to ensure that a claim for which your firm has exposure will be covered by your insurance company.

The typical insurance policy for law firms may exclude coverage for allegations related to work done by your law firm outside of a very traditional scope of legal services. For example, many policies exclude coverage relating to lobbying or to title agency work.

Moreover, a policy may exclude claims based upon alleged negligence relating to work done by another law firm as a result of a referral or co-counsel relationship. A competent agent can work with insurers to make certain that such claims will be covered.

It goes without saying that all agents are not created equal with respect to lawyers' professional liability insurance. While many attorneys use friends, relatives or neighbors to handle home, auto and business insurance, lawyers' professional liability insurance should be handled by an agent that specializes in that discipline.

Lawyers' professional liability insurance policies are written on a claims-made policy as opposed

to the more common occurrence policy. As such, your insurer is responsible for claims made during the policy year regardless of when the alleged error took place.

Most general insurance agents have little or no experience working with claims-made coverage and do not fully understand important issues such as retroactive dates and prior acts. Lawyers' policies are written oftentimes by specialty insurers who do not write more traditional lines of insurance coverage.

As a result, general agents do not have access to many of these insurers and cannot present the full range of terms and conditions to your firm. Your firm relies on its agent to present the most complete set of options and negotiate the most optimal terms and conditions. Make sure that you are engaging an agent capable of doing so.

Experience and longevity

While there are more than two dozen insurance companies that write lawyers' professional liability insurance, not all insurers should be viewed in the same light.

A law firm should ask about a proposed insurer's financial strength. Rating agents such as AM Best provide information about an insurer's financial position and should be consulted.

Law firms should inquire about an insurer's history writing lawyers' professional liability as well. Many insurers have little track record writing this class of business. These insurers have not experienced many

losses yet, and, therefore, do not know if they can continue to profitably write law firm business into the future.

Moreover, these insurers may have little, or no, experience handling professional liability claims.

It goes without saying that you do not want to enter into a relationship with an insurer that may not be around for the long term and/or may not handle a claim properly. ■

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David Kramer, Esq.
Vice President, Practice Leader
Lawyers' Professional Liability
248 433-7604
dkramer@oswaldcompanies.com

www.oswaldcompanies.com

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