

Legal Malpractice Coverage

By Travis Holt

Legal malpractice insurance is something you rarely have to use but when you do, it's important to have coverage in place that protects your reputation and the law firm you have built. To ensure you have the right product in place, you need to take a holistic approach that considers more than just price. Tim Sifers, Managing Partner of The Potts Law Firm, LLP said, "When we engaged Brush Creek Partners to handle our legal malpractice needs, we didn't know there were so many differences from one policy to the next. They made us aware of the different policy language, financial strength, and additional services provided by many different carriers. We had a very complex placement and were able to secure a comprehensive program with multiple carriers that provided broad policy language and financial stability at an extremely competitive price." While most law firms look at price and understand the coverage differences from one policy to another, there are three other areas that typically get less attention: risk management, the financial strength of the carrier, and cyber liability. By doing a comprehensive review of your legal malpractice coverage, you will reduce the risk of a claim and be more prepared in the event of a claim.

RISK MANAGEMENT

According to David B. Willett, CPCU, ALCM, and Executive Vice President of Pearl Insurance, "Proper risk management is a key for attorneys whether operating as a solo or in a large firm."

Risk management can be extremely broad but includes specialization, the implementation of processes and procedures, document security and hiring procedures. If you don't have a risk management specialist in your office, your insurance broker or carrier should be able to provide assistance.

Sally Field is the Legal Professional Liability Leader with Attorney Protective and has been an attorney for more than 30 years. Attorney Protective is the Berkshire Hathaway insurance program for lawyers and when asked about risk management, Sally said, "From our unique vantage point, we see what is causing conflicts between lawyers and their clients. Some of those conflicts result in claims and some don't. The [conflicts] that don't often lead to the client taking their business elsewhere. Interestingly, the best practices that help avoid claims also help with client relations and retention."

FINANCIAL STRENGTH

Your carrier's financial strength provides confidence that they will pay your claim and also can help provide some clarity

on future price increases. A.M. Best Company rates a carrier's financial strength and this information is readily accessible. They give ratings from A++ (Superior) to S (Suspended) for financial strength, as well as ratings for size from I (Less than \$1 million in surplus) to XV (\$2 billion or more in surplus). According to the A.M. Best website, a carrier's rating between A++ and B+ is secure, and anything B or below is vulnerable.

Even though most legal malpractice carriers are backed by your state's guaranty fund, you still have risks if your carrier files for bankruptcy. Law firms looking for coverage when moving from a bankrupt carrier could see significant price increases and carriers unwilling to pick up existing retroactive dates. In addition to reducing this risk, a financially strong carrier will typically be able to keep pricing more consistent. A carrier with a large surplus, fewer claims, and a long-term client base doesn't need to increase premium as rapidly as a carrier with less surplus, more claims, and clients who move frequently in the event that claims increase.

CYBER LIABILITY

Cyber Liability has become an area of increasing concern to the legal community. In June of 2012, James Rhyner, a vice president of Chubb Specialty Insurance, said, "Cyber thieves frequently target law firms because the firms possess a wealth of confidential information on clients." There is an ongoing debate in the insurance community regarding the interaction between cyber liability and legal malpractice coverage. Your policy may or may not cover a loss if it were triggered by a data breach so make sure you read your specific policy language.

Because of the lack of clarity, some carriers have added limited cyber liability coverage to their legal malpractice policies. While this can be a nice feature, it's important to understand the limitations. Most of your costs in the event of a data breach or other technology failure are first party (notification, computer forensics, loss of income or billable hours, fines and penalties) and typically require a stand-alone cyber liability policy to provide coverage. As your firm continues to rely more on technology, technology risk management and due diligence deserves more time and resources.

There are many factors that go into your decision regarding legal malpractice insurance from the scope of the product to the choice of the broker. While the task can seem daunting, a good broker and carrier can provide a comprehensive look at your legal malpractice coverage. ■



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