

Legal Professional Liability Insurance

[by Rachel Daniel]

So you just graduated law school, passed the bar, and are about to step into the legal field as an official, licensed attorney. Soon you'll realize that there's much more to legal practice than research, briefs, and court appearances. You must protect yourself and your future against any possible malpractice claims, legitimate or not.

Here we'd like to help you understand the complexities of the professional liability insurance policy by explaining policy basics, what you can do to limit your exposure, and how to protect yourself against future uncertainties. It's a stark possibility that if you spend the majority of your working life as an attorney in any practice area, you may face a claim of malpractice.

Policy basics

Your basic insurance policy consists of: a declarations page, definitions, basic coverages, exclusions, limits of liability, defense provisions, settlement provisions, conditions, and finally, any endorsements or riders. Each section is discussed more fully, below.

Venturing back to first-year contracts and the parole evidence rule for a moment, I'm sure we all faintly remember that information contained in a final, integrated contract rules, with some always-present exceptions of course. This is true with malpractice insurance, as well. Your contract will consist of what is included in your final integrated writing. Why does this matter? Because unless your policy expressly states otherwise, your insurance application will not be included in your contract materials. So to protect yourself, you may want to make sure that your application is physically included with your contract materials. The same applies to any other materials you may want included in your final contract.

There is no set standard malpractice policy. Therefore, it is vital that you understand every agreement and loophole before you finalize your contract. As a contract of adhesion, however, you as the insured may be

looked upon in a more favorable light than the insurance company, if you should contest any aspect of your policy at a later date.

The Claims-Made Policy

Legal professional liability policies are claims-made policies. Claims-made policies provide coverage to claims reported during the policy period. However, if a claim occurred prior to the enactment of the policy, but was reported during the policy, there might be a prior-acts exclusion, limiting coverage. Understanding your policy is vital to preventing gaps in coverage.

The Declarations Page

This page contains the basic terms of coverage. It is an outline of who and what is covered.

Definitions

The definitions section specifies the insureds. Check the definitions closely, making sure that everyone and everything you want covered is actually protected. The definition of "insured" is important because it lists all covered parties. Also, make sure that the definition of "legal services" covers all the services you provide. If a specific legal service is not covered, you may need to add a coverage endorsement.

Basic Coverage Agreements

Generally, most policies provide coverage for malpractice claims arising from alleged wrongful acts occurring during legal representation. Also included in your basic coverage are acts or services that are natural offshoots of your practice, such as: notary public, title agent, pro bono, or trustee services. Think about what extra services your

practice may provide. Negotiating coverage for these services offers necessary.

Exclusions

This section precludes coverage for enumerated acts. Standard exclusions include acts with a specific intent, such as: fraudulent, malicious, dishonest, and criminal acts. Other common exclusions include: punitive damages, sanctions, prior acts, discrimination, harassment, injury, property damage, advertising, investment or financial-services advice, giving advice outside the scope of your specific practice area, and claims deriving from acts committed in other capacities, such as wrongful acts committed as a director or officer.

Meticulously study your exclusions. If you want coverage for an enumerated exclusion, you may have to negotiate its inclusion or add an endorsement to your policy. This may up the cost of your policy, but it will pay off in your knowing that you are adequately protected.

Liability Limits

The limit of liability is the maximum amount the insurer is liable for under your policy. It may include per-claim limits and/or aggregate limits. Per-claim limits set a specific dollar amount for each claim brought. Aggregate limits set liability for the total amount of claims brought during your policy period.

Depending on your practice area, you may require higher-than-average limits. For example, if you are dealing with multi-million-dollar real estate ventures, then you may want to make sure your liability limit is in line with your potential liability.



Liability Limits & Defense Expenses

It is important to understand whether the costs associated with defending a malpractice claim are included within your liability limits. Your defense costs could potentially consume your entire liability limit. Thus, if you are found liable, you may find yourself with no insurance to cover any loss or judgment. This could prove devastating if you do not have the resources to cover such amounts. However, your policy may provide you with an expense allowance to offset this potential problem.

Some policies state that claim expenses are outside of the liability limits, allowing the limit to cover only potential losses. Such a policy might still place a limit upon defense expense allowances. Pay close attention in this regard.

Settlement Provisions

Many policies do not require the insurer to gain your consent before settling your claim. It may make good business sense for the insurer to settle a case early, but you may want to fight the allegations of malpractice. Often if your consent is required and you refuse to settle, then there will be an additional limit of liability upon any judgment.

Right to Choose Defense Counsel

Faced with a malpractice claim, do you want the right to choose your own defense counsel? Many policies do not grant you this right. This is another important aspect to take into account when choosing a policy.

Deductibles, Loss-Only Deductibles, & Reducing Deductibles

Deductibles require insureds to bear the cost of claims, up to a certain value. Larger deductibles decrease the overall cost of your policy, as they transfer liability for smaller claims to you, as the insured.

Loss-only deductibles require you to pay the

deductible only in the event of a judgment or settlement award. Thus, you would not be required to pay the deductible for claims expenses or defense costs.

Reducing deductibles are insurer-driven incentives that encourage early reporting of potential claims. If you believe a client may bring a claim and if you report this to your insurer, the insurer will reduce your deductible up to 50% if the claim is filed.

When choosing a deductible, it is important to take stock of your finances. If a claim should arise, how big of a deductible check could you realistically write? Most insurers require a minimum deductible of \$1,000 per attorney, per claim. Many insurers also set a maximum deductible, which varies from insurer to insurer.

Prior Acts Coverage

Most policies are claims-made policies, but often prior acts are excluded from coverage. Adding extra coverage can provide protection for claims arising out of acts occurring before your policy period began. You will pay extra for this coverage, but closing up any liability loopholes is worth every cent.

Different prior-acts coverages are available. Full prior-acts coverage is the most inclusive and protective. However, read your policy language carefully because full prior-acts coverage doesn't necessarily grant you full coverage. Insurers often place limitations upon this coverage for certain exposures.

Prior acts coverage can also start at a set retroactive date. You may decide you only need two years of coverage, for example, so your coverage would include the two years prior to the inception of your contract.

Endorsements

Endorsements are any additions to your basic policy. For example, if your policy does not

include coverage for a service your practice provides (trustee services, for instance) then you may want to add coverage with an endorsement.

Conditions to Coverage

Here the insurer lays out the conditions that must be met under the policy. Common conditions include: prompt notice of claims, reasonable notice of acts or circumstances likely to lead to a claim, cooperation, full disclosure, and reporting requirements. Also included are notice of cancellation and notice of nonrenewal conditions.

What to do if you have a claim?

Although you may be angry, embarrassed, or frustrated, you cannot ignore any claims filed against you or your practice. You should contact your insurer immediately. Your policy will contain any reporting requirements and the steps you should take regarding the claim.

Further, if you think a potential claim could be filed, contacting your insurer is also a good idea. Your insurer may be able to prevent a mistake from turning into a full-blown malpractice claim.

Taking the time now to understand all the details of your malpractice policy may prove frustrating and time consuming, but it is time well spent if it protects you from a potential landmine in the future. After all, a comprehensive policy eases your conscious and allows you to focus on what you love - the practice of law.