

#### **Do I really need professional liability insurance?**

Dealing with a professional liability claim can be expensive. Even if a lawyer is ultimately cleared, the money spent on defense, not to mention the hours of time devoted to addressing the claim and the anxiety the situation can bring, can be a very costly proposition. Professional liability insurance helps to ease that burden both by sharing some of the monetary risk and by assuming much of the responsibility for responding to and defending against that claim. Professional liability insurance can also help protect your clients against significant losses, by helping lawyers meet their obligations to protect their clients' interests even in the worst of circumstances.

#### **What are the common causes of Professional Liability Claims?**

Lawyer malpractice claims are as varied as the creativity of the plaintiffs' lawyers who represent the claimants. Probably the most common claims brought against lawyers are those alleging simple, straightforward mistakes, including administrative errors or substantive errors of law. Also frequent are claims alleging that the lawyer completely and improperly abandoned a representation or entirely failed to address the client's needs in any way. Increasingly, lawyers face suits in which the primary or sole allegation is one of breach of fiduciary duty, often because of a conflict of interest, and frequently based in duties arising through implication. In addition, claims are also made as a result of fees suits brought against clients, as well as claims brought by non-clients.

#### **What risks does lawyers' professional liability insurance typically cover?**

Legal malpractice policies are usually designed to provide coverage for claims that arise from "wrongful acts" committed in the rendering of legal services (sometimes called "professional services") in your capacity as a lawyer and generally provide both indemnification coverage and claims expense coverage, subject to specified deductibles and endorsements. In general, covered acts usually also include those committed in a variety of ancillary services regularly provided by lawyers as a natural offshoot of their regular practices, such as:

- Services as a notary public
- Services as a title agent and or title agency
- Acting as a trustee or executor of an estate in connection with representation of a client
- Acting as an officer, director, or member of a legal professional association
- Broader coverage often can be added through amendment of various endorsements depending upon the lawyer's circumstances and the carrier's interest and capacity.

#### **Who does professional liability insurance typically cover?**

Typically, professional liability insurance policies are designed to cover lawyers and employees of the law firm acting on behalf of the firm (and, sometimes, lawyers currently with the firm who are sued over activities performed when with a different firm), and the firm itself, as specified in the policy. Often also included are predecessor firms; lawyers (including of Counsel attorneys) or employees no longer with the firm for actions taken while with the firm; and heirs, executors, administrators and other legal representatives and assigns of a named insured, or that insured's estate.

#### **What does legal malpractice insurance cover?**

Defense costs and indemnity payments incurred to resolve claims made against an attorney for legal malpractice; some policies also cover claims made against an attorney who acts as a title agent, notary public, lobbyist, trustee or administrator of an estate, etc.

#### **Why do I need Lawyers' Professional Liability insurance?**

Lawyers' professional liability coverage helps protect law firms from costly legal malpractice lawsuits. Law firms that do not carry this coverage leave themselves open to a host of lawsuit possibilities, the most common being:

1. Legal malpractice (a former client unhappy with the service or judgments they received).
2. Suits that may arise out of a former client's assertion that the bill is too high, unjust, or, more commonly, overdue

**These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.**

#### Why should I buy it?

1. Asset protection: without insurance, you'll have to fund your own malpractice claim defense and any indemnity payment made to the plaintiff, which will exhaust the assets of most lawyers.
2. Professional claim handling v. handling the claim on your own: legal malpractice insurers employ professionals who handle claims all day, every day, and have contracts with law firms that specialize in defending these claims. You don't.
3. Protection for your clients: even the best lawyer can make a mistake that can't be reversed, and harms a client. If that occurs, the ethical thing to do is to make the client whole; that's what legal malpractice insurance does.
4. Some attorneys believe that having malpractice insurance invites malpractice claims, i.e., a disgruntled client won't sue you if you don't have malpractice insurance. That's a myth. The key word in that sentence is "disgruntled".
5. And to do as some attorneys do, and close your practice, and if necessary, declare bankruptcy if you get sued and a judgment is awarded against you, is both unethical and a poor business strategy, because the financial and reputation costs of doing so far exceed the cost of malpractice insurance.
6. Client acquisition: some clients won't hire you, and many attorneys won't refer cases to you, unless you have malpractice insurance. Too, many courts require you to have it in order to be listed on their panels.

#### I've never been sued by a client, and I run a safe practice. Why do I need it?

Because you never know when you'll make a mistake or encounter a client who'll sue you, even if you've done nothing wrong. If that happens and you're uninsured, then you'll bear the time, effort, cost, and stress of handling the claim on your own, and all of your personal assets will be at risk.

That's an enormous gamble to take when you can instead pay a relatively modest premium for a policy that will let you avoid those risks.

#### What is a potential legal malpractice claim?

A potential legal malpractice claim is any act, error, omission, circumstance, or personal injury that might reasonably be expected to give rise to a claim against any insured under the policy; or any breach of duty to a client or third party that has not resulted in a claim against an insured.

#### What is a legal malpractice claim?

A legal malpractice claim is a demand made upon any insured for loss, as defined in each of the coverage units including, but not limited to, service of suit or institution of arbitration proceedings or administrative proceedings against any insured.

#### What is an Extended Reporting Period (ERP) or "Tail" coverage?

Extended Reporting Periods are used to provide coverage for claims that may be reported after the end of a claims-made policy period. The option to extend the reporting period does not extend the policy period. The ERP cannot be renewed or extended.

#### What is the difference between Defense Inside and Outside?

Defense Costs Inside the Limits of Liability means that both the loss amount and claims expenses are deducted from the available limit of liability, and reduce the amount of your available limits to pay the actual claim. Defense Costs Outside the Limits of Liability means that only the damages/settlement amount is deducted from the available limit of liability, and that defense costs are in addition to the limits of liability.

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