Legal Mal narrative

If a lawyer does not have legal malpractice insurance it is possible that victims of legal malpractice will not have any legal recourse against a negligent legal professional. If a lawyer does have legal malpractice insurance typically two things can happen in a legal malpractice case. First, the legal professional's insurance company will defend the client's former attorney against the claims. Secondly, the insurance company will allot resources to pay the client in the event that the defendant is found guilty of malpractice.

Legal malpractice is defined as any act which is negligent or wrongfully executed by an attorney who causes monetary damages to his/her client. Legal malpractice can be perpetrated in any field of law.

Legal malpractice can be carried out in a number of ways. An attorney can be held liable for cases where a case was dismissed because of an attorney's negligence rather than the legitimacy of the case. Legal malpractice can also be the result of an attorney's failure to properly or adequately pursue a case, failure to secure experts and witnesses, and failure to act before calendar deadlines and statutes of limitation. Any action or negligence on behalf of a legal professional that causes undue injury to their client is considered legal malpractice.

It is estimated that six to 12 percent of all private attorneys face legal malpractice charges each year. The cost of litigation is greater than the cost of legal malpractice insurance; therefore many attorneys seek this type of protection. Most types of legal malpractice insurance offer “claims made” policies meaning that the attorney is protected in any claim made during the policy period regardless of when the alleged malpractice took place.

Far too many attorneys treat the purchase of malpractice insurance like that of an off-the-rack commodity.  The purchasing decision is guided largely by cost, advertising, or the relative ease of the application process.  Ironically, few attorneys actually read their own malpractice insurance policy until after they receive a claim.

Instead, many law firms rely on assumptions in purchasing coverage and then set the policies aside, at least until a claim is made.  Then, the terms and conditions become all important, and that is precisely the time when you, as the insured, can do little to affect the coverage that may or may not be afforded under the policy.

The malpractice policies available in today’s commercial market vary greatly and insurance companies are more willing than ever to negotiate specific terms and conditions that can address the unique risks faced by you and your firm.  While the best way to take advantage of this opportunity is to use an experienced broker who will solely represent your law firm’s interests, this article provides a general roadmap for law firm administrators, general counsels, and managing partners to use in negotiating professional liability coverage.

When comparing the policies offered by different companies, you should pay special attention to the following policy provisions:

**Punitive and Exemplary Damages Coverage**

Most lawyers’ professional liability policies exclude coverage for punitive and exemplary damages, some policies do not have a Regular Policy exclusion for punitive or exemplary damages.

**Innocent Partner Protection**

Criminal, dishonest, fraudulent and malicious acts by a lawyer are excluded from coverage by all policies. But some policies preserve coverage for any innocent lawyers under the policy who neither participated or acquiesced in such acts, nor remained passive after having learned of such acts.

**Deductibles – Per Claim v. Aggregate**

With a “per claim” deductible, the insured is charged a new deductible for each and every claim during a policy year. Unless otherwise endorsed, we often secure policies have an “aggregate” deductible whereby the insured never pays more than one deductible per policy year regardless of the number of claims.

**Hammer Clause**

A “hammer clause” may limit the insured’s coverage if the insurance company wants to settle and the insured does not. If an insured refuses to consent to settle, a “hammer clause” allows the insurance company to limit the coverage to only the amount for which the claim could have been settled. In effect, the coverage for the claim is reduced to the settlement demand. Some policies provide for a peer review process to assess whether settlement is appropriate in the event of a disagreement between the parties. For more on “hammer” see : [www.eperils.com/hammer](http://www.eperils.com/hammer)

**Defense of Claims**

You want to know how your insurance company will treat you if you have a claim. Some insurance companies choose defense counsel without any input from the insured. Some policies specifically provide that Insurer will consult with the insured before hiring counsel, unless there is an emergency. Many insurance companies have non-lawyer adjusters, often based outside of Insured’s geographic territory. Knowing the state laws are important consideration.

**Loss of Earnings**

The time away from the office defending a malpractice claim means a loss of revenue to the attorney. Some policies will provide Insured with $500 or more for each day they are out of the office for trial, mediation, arbitration or deposition in defending a claim under the policy