



E&O Edge

Lawyers Professional Liability Hazards of changing your E&O carrier

In today's economy we are looking for ways to save money but not change our lifestyle. There are many costs to running a law firm and the professional liability policy is a significant expenditure. You may be tempted to change insurance carriers to save premium dollars but changing carriers could end up changing your lifestyle. Each policy's provisions must be carefully reviewed and evaluated.

Lawyers professional liability policies are for the most part written on a claims made and reported basis, which means that a lawyer must advise their current carrier in writing when they know of an alleged act, error, omission or circumstance that could give rise to a claim or when there is a claim made against the law firm. Such reporting must be done during the policy period with most policies providing a grace period in which to report an actual claim. Most policies provide, if, during the policy period, the law firm reports a matter that could give rise to a claim and a claim later arises from that reported "potential" matter, coverage will apply under the policy in which the matter was first reported.

The importance of an annual review

It is important to remember that insurance policies are contracts for a twelve-month period. Each year a new contract is created and the firm must attest to its knowledge of claims and potential claims. When the law firm renews coverage with their carrier, the application contains a statement reminding the firm that all claims would be excluded that result from

any acts, circumstances or situations that were known prior to the inception of coverage being applied for, that could reasonably be expected (reasonably foreseen) to result in a claim. The law firm should annually inquire of each lawyer, independent contractor, of counsel and employee if they are aware of any fact or circumstance, act, error, omission or personal injury which might be expected to be the basis of a claim for lawyers or title agents professional liability. Working with an insurance professional who is an expert in professional liability matters is an essential part of this process.

A carrier should want the firm to advise them of these specific situations promptly, so their professional claims technicians can work with all parties to rectify the situation, if possible, before a claim is made. This can save time, money and the emotional toll of responding to a claim.

Failure to report a claim

However, what if the firm is aware of a potential claim and didn't tell their carrier during a prior policy period about that potential claim? Failure to report a claim during the current policy period and grace period will result in a denial of the claim. Further, failure to report a potential claim when the the insured could have reasonably foreseen that a claim would arise from the circumstances may result in the denial of a claim.

Hence, your lifestyle is about to change because you will now have to take care of this claim yourself, retaining a lawyer and paying all expenses and possible a loss out of your own pocketbook.

Innocent insured coverage

What if an employee didn't tell the firm's owners about a claim or potential claim?

Many policies provide innocent insured coverage for circumstances where one attorney didn't know that another member of the firm committed an error, the matter was not reported and a claim has now arisen. As an example, after you, the innocent party, advise your carrier in writing, the claim technician will review your policy coverage for (1) the Named Insured, (2) the responsible attorney(s) and (3) the attorneys that have not been part of the error.

Every carrier has its own contract and specific wording within the Innocent Insured clause and this wording may not be found in the same section of every carrier's policy. Be sure to review the policy exclusions as well as definitions to see what is covered and how it is covered. As an example, there is a considerable impact on coverage if the innocent insured provision applies excess of the assets of the Named Insured. This provision may create a de facto deductible that renders coverage immaterial.

A prior acts reminder

Another critical issue is prior acts coverage. This should also be reviewed by your firm's insurance agent if your firm changes your insurance carrier. See our Summer 2009 Newsletter- Lawyers Professional Liability Retroactive date: a key component to policy coverage. Many times when you change carriers the new carrier will apply a "retroactive date" whereby claims based on alleged

wrongful acts made prior to this date are not covered by the policy. Generally, when you remain with the same carrier, the retroactive date applies from the first policy period which may be years ago or it may be removed.

Exercise your own due diligence

As a lawyer, you are familiar with contracts and the one that covers the law firm's professional business is as important as the contracts you handle for your clients. You must take the time to read it and understand it because it is covering your business... your lifestyle.

The ultimate responsibility for understanding the contract and how it will address your professional liability exposures falls to you. While working with an insurance agent who specializes in lawyers exposures is important, your own understanding of both the contract provisions and your responsibilities under that contract is critical.

Do you have all your controls in place to make sure your responses on the application (and supplements) are true

and thorough? If not, think about putting those in place before you complete your next application for professional liability insurance. Then you can enter into the new contract with all the facts and peace of mind.

Looking for the cheapest price may cost you more in the long run. To ensure that this critical purchase meets your firm's needs:

- Compare coverages
- Consider the carrier's longevity, stability and expertise
- Ask about the claim handling and risk management services
- Discuss your law firm's specific needs with an agent who specializes in lawyers professional liability

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