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Lawyers Professional Liability Insurance

ARE YOUR LPL
LIMITS SUFFICIENT
FOR TODAY'S CONDITIONS?

WHITE PAPER



Factors to be considered when determining Lawyers Professional Liability Risk

Professional liability insurance can be an awkward topic for brokers, as it sometimes entails reminding accomplished professionals that they need protection from their mistakes. However, law firms understand the value of specialized expertise – especially when it comes to the coverage afforded by their own Lawyers Professional Liability Insurance.

Nonetheless, there are indications that a surprising number of lawyers are underinsured for professional liability, or “Errors and Omissions” (E&O).¹ Underinsurance for LPL is often a matter of failing to regularly audit coverages, limits, and retentions to see if they adequately reflect the needs of the firm.

It is the insurance broker’s responsibility to routinely analyze the exposures of their law firm clients to determine how much coverage is needed to protect the assets and reputation of the law firm and its individual attorneys.

Exposures and Claim Trends

The observations in this paper are derived from Worldwide Facilities’ experience, current market conditions in Lawyers Professional Liability Insurance, and supporting data from trade publications, including The Profile Of Legal Malpractice Claims, 2012-2015, published by the American Bar Association’s (ABA) Standing Committee on Lawyers Professional Liability.²

The ABA study found the percentage of claims resolved with no expense or indemnity payment fell from 60% in 2011 to 43% in 2015,³ further highlighting that the cost for defending claims, even those without merit, continues to rise. Over the same period, the number of settlements between \$50,000 and \$200,000 nearly doubled.⁴



According to the ABA, more than half of all LPL claims in 2015 alleged “substantive” errors, such as failure to know and/or apply the proper law. In addition, more than 13% of claims alleged wrongful conduct regarding “client relations,” such as failure to follow client instructions or obtain client consent for certain actions. Nearly a quarter of LPL claims arose from “administrative” (e.g., clerical) errors, and almost 10% from intentional acts.

According to another survey of large LPL insurers, the most common source of LPL claims rises from failure to avoid and/or disclose conflicts of interest by attorneys assigned to cases.⁵ Today, lateral movement of attorneys is higher than ever before. As law firms merge and consolidate, attorneys bring the exposure of past or ongoing representations into their new firm’s engagements, which can give rise to conflict issues that firms may be unaware of.

If sustained in court, any claim could result in reputational damage that far exceeds monetary awards. Conflicts, either actual or alleged, can have reputational consequences, in addition to monetary judgements or awards against the firm.

Access to a dedicated Risk Management program through a firm’s LPL insurance can have value that goes beyond the resolution of individual claims.

Although a firm may be accustomed to resolving small LPL claims on its own, it may not be prepared for complications that arise in high-stakes cases.

Defense Costs and Strong Carriers

Of the nine LPL insurers referenced in the aforementioned study, all indicated that claim defense costs had risen over the previous year. Eight of the nine reported average defense costs exceeded \$50,000 per claim – in most cases well in excess of that figure.⁶



Defense cost coverage is typically provided within the basic limit of an LPL policy, thus, these limits are often referred to as “burning limits,” “consuming limits,” or “depleting limits.” In light of that, insureds and brokers must consider the impact of defense costs when deciding upon a limit that must also cover damage awards.

Among the complications affecting claims of all types is one that lawyers are well aware of: the growing cost of “e-discovery”, which is a factor driving an overall increase in the cost of claim defense. There’s money to be made in the ever-more systematic mining of emails and other electronic records. Law firms increasingly find their own operations subject to review (on their own dime) by sophisticated algorithms designed to identify lapses and contradictions in messages.

The market for professional liability coverage may be showing some signs of hardening after a prolonged soft market, but underwriting capacity is still available, and Insureds, including lawyers, should rely on their brokers to negotiate the most thorough coverage.

Of course, an insurance policy is only as good as the carrier underwriting it. This is especially true in a long-tail line where you need to know your insurer will be in business over the several years it may take to resolve a claim.

Worldwide Facilities only markets LPL coverage from insurers with superior ratings from Standard & Poor and the A.M. Best Co.

We recommend that law firms refrain from purchasing a policy from any carrier with less than a superior rating from an established, authoritative rating agency.

Exposures and Underwriting Factors

LPL insurers will rely on a variety of factors to underwrite and price coverage, but underwriting criteria may vary. Factors to consider:

- ✔ **Number of Attorneys**

The more attorneys in a firm, the greater the exposure for a professional liability claim.

- ✔ **Gross Revenue**

Increased revenue will be considered increased exposure.

- ✔ **Specialization**

The greater the level of specialization in a firm, the more receptive an LPL insurer is likely to be.

- ✔ **Mergers and Lateral Hires**

A pattern of recent mergers and lateral hires from other firms may put the firm at an increased risk for claims arising from conflicts of interest. Brokers and their law firm clients should review and discuss procedures for screening attorney and client intake for conflicts of interests.

- ✔ **Area of Practice**

According to the ABA, certain areas of practice, particularly transactions and real estate, tend to produce more frequent LPL claims. The dollar amount at stake in transactions as well as the sophistication of legal work, including the practice area and industry segment, will factor into the pricing and level of coverage.

- ✔ **Jurisdiction**

Insurance companies have struggled to write profitable LPL business in California and Florida for any extended period of time. Expect that to show up in your insurance underwriting and pricing if you operate in those states or other challenging jurisdictions. Brokers should discuss pricing expectations with firms practicing in challenging jurisdictions to avoid premium shock.



Selecting Limits and Retentions

It is important to keep in mind that the factors used by an underwriter to price a risk are not an exhaustive list of what a broker needs to consider. Brokers should audit and analyze their clients' exposures and operations to determine how much has changed since the policy was last renewed and highlight any new or evolving exposures.

When consulting with law firm clients on limits and retentions, a broker should inquire whether there have been any past or anticipated changes.

Areas to focus on may include:

- The size and experience of the firm's legal team
- Attorney turnover and the process of vetting or onboarding laterals
- Claims frequency and severity
- The number of attorneys and/or offices that have been added, along with any potential mergers or acquisitions
- Any new areas of practice or industry segments
- New clients and client contractual requirements
- The dollar amounts of engagements, both average and largest
- Operational changes
- Succession planning

With so many factors at play in determining the level of LPL risk, brokers should seek out resources that can provide relevant benchmarks for firms to consider when selecting their LPL limits and retentions.

A specialist broker will play an important role in determining the adequacy of an insured law firm's limits and overall program. Ultimately, determining the appropriate limit for Lawyers Professional Liability Insurance is more art than science. Worldwide Facilities is prepared to help you master that art.

About Worldwide Facilities, LLC

Established in 1970, Worldwide Facilities is a national wholesale insurance broker, managing general agent and program underwriter. Our team of insurance specialists has access to virtually every specialty domestic and international insurance market.

Take advantage of our expertise in Lawyers Professional Liability Insurance. Contact William Schmitt in our Chicago office at wschmitt@wwfi.com or call (312) 465-5303.



Notes

- 1 Chris Buckman and Michael McCormick, "[Legal Malpractice Insurance 2018 Update](#)," Swiss Re Corporate Solutions, April 2018 slides 11-14
- 2 American Bar Association (ABA), Standing Committee on Lawyers' Professional Liability, "[Profile of Legal Malpractice Claims, 2012-2015](#)," September 2016
- 3 *Ibid.*, p. 21
- 4 *Ibid.*, p. 21
- 5 For an announcement of results from the Ames & Gough survey, go to https://www.amesgough.com/sites/default/files/A%26G%20News%20Release%20-%202018%20LPLI%20Insurer%20Survey%20-%2006-26-18%20-%20Final_0.pdf
- 6 Andrew Strickler, "[Big Legal Malpractice Claim Payouts Up As Volume Stays Flat](#)," Law360, June 25, 2018



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