Save Money on your Legal Professional Liability Premium

Mark S. Pincus

Universal Financial Group

About the Author:

Mark S. Pincus has been working in the legal industry for over 10 years. He provides wealth management solutions for attorneys, their families and foundations. Universal Financial Private Wealth Management helps clients build and preserve their financial wealth. Universal Financial Group provides access to innovative investment ideas and opportunities creating and implementing long-term asset allocation within the context of each client's particular risk tolerance.

Developing customized investment strategies, estate preservation, maximize charitable giving and complex business solutions. Look for his next short book on the Last Great Tax Saver. He can be reached at 469-222-2009 or email him at mark@universalfg.com

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This book is dedicated to my mother Mrs. Sondra Pincus was who passed away in December 2010. She was and will always be an inspiration. I Love you Mom!

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Chapter 1

Why do you need Professional Liability Insurance?

Approximately 6% -- or about 55,000 -- of the 951,000 people working as attorneys in the U.S. are likely to face an allegation of professional liability in any given year. Claims activity against attorneys has steadily increased in each of the past two decades, with no reason to believe the pattern will end. Lawyers in all parts of the country, all size firms, and all areas of practice are at risk every year.

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 (through indemnity coverage and defense expense coverage) and by shouldering much of the responsibility for responding to and defending against whatever claims are made (through claims handling services). Professional liability insurance can also help protect your clients against significant losses.

Everyone can make a mistake, even lawyers. Professional liability insurance can help lawyers meet their obligations to protect their clients' interests even in the worst of circumstances. Once upon a time, lawyers were less likely to need or to have professional liability insurance, which covers monetary loss and the expenses of an insured attorney or law firm for their errors and omissions. It was understood that a lawyer's diligence, attention to detail and attentiveness to clients provided protection enough against legal malpractice claims. In fact, some lawyers even believed that the insurance acted as a lightning rod to suits.

Yet the harsh realities and risks of law practice today -- as typified by the proliferation of suits in which corporate lawyers are sued for malpractice not by their clients but by third-party stockholders -- all but dictate that law firms, regardless of size, take out lawyer liability insurance. Such coverage indemnifies the policyholder from claims arising out of, for example, inattentiveness to deadlines, failure to perform a title search properly, and other garden variety types of negligence, all the way to very complex and sophisticated forms of negligence, such as when public securities offerings go afoul because lawyers give improper advice.

Chapter 2

Top Ten Causes of Professional Liability Claims and ways to avoid them

Your relationship with your client. The initial interview is, of course, the one unit of service that is constant across all forms of legal service delivery. It is also one of the most critical units of service. **The initial interview: (1) shapes client perception of the lawyer; (2) defines the service to be provided in terms of both problem and goal; and (3) is an important opportunity for client education, e.g. confidentiality, substantive legal rights, what the client can do for**

himself or herself, and the need to preserve evidence.

In many cases the initial interview may in fact be the most significant communication before outcome determinative events such as hearing or settlement. By assessing effectiveness at the outset of the case, this approach provides feedback to lawyers during provision of service, thus creating the possibility for improved service and increasing the relevance of the assessment both to lawyers and clients. By having and keeping a good dialogue from the onset of the case, this will help eliminate potential challenges down the road.

Preparation and or lack of it. Why handle cases where you have little expertise? Take cases in which you have specialized knowledge and or the resources to get fair value. This will help eliminate potential claims down the road.

Bad Clients. Have you ever taken on a client that you knew was going to cause you trouble? Attorneys who use intake questionnaires that not only include name, address, case information etc. but also include if the client has ever had a case in which they fired their attorney. Do not be afraid ***not*** to take a case.

Terms of representation. What is an engagement letter? It is about the money,

describing how fees will be set (e.g., an hourly rate, a flat fee, a contingent fee, etc.), what other expenses will be paid, an estimate of the fees, a deposit of funds, how withdrawals from a trust account will be made, and what happens when the till runs dry. If someone other than the client has agreed to pay the fee, then a separate agreement to guarantee payment of fees is necessary. The agreement can provide how fee disputes will be settled, even providing an escape clause permitting the lawyer to withdraw if fees are not paid. The agreement can outline the obligations of both the client and the lawyer.

The lawyer can agree to promptly return all phone calls within 24 hours, correspond on a regular basis about the progress of the case, and provide court decisions promptly. The client may agree to promptly return all phone calls, respond to all correspondence, cooperate with the lawyer, meet with the lawyer when requested, and advise the lawyer of any changes in his or her situation. Clients rarely retain lawyers for unimportant, insignificant, paltry matters, so the engagement letter should be treated with at least as much importance as that given to the purchase of an engagement ring or new car.

Give the client the opportunity to think about the engagement letter overnight. Answer any additional questions the client may have. Provide a duplicate of the signed agreement to the client. Just as important are non-engagement letters to send a clear signal to the would-be client that the lawyer isn't representing him or her. The non-engagement letter can take many forms—for situations ranging from "We've researched and examined your case, but we're declining to take it," to a conflict of interest, to "We haven't heard any more from you since the time you dropped by the office." **The disengagement letter** is used when a

lawyer wants to leave the relationship for some reason, mostly commonly nonpayment of fees. A letter declining further representation warns a client who has dropped from the radar that the lawyer will be closing the file unless he or she hears otherwise, and it also warns the client that deadlines may loom. When the purposes of the engagement letter have been fulfilled and the job is done, a closing letter finishes off the relationship and officially closes the file, telling the client what happened and how the files will be stored. While there is no set format, an engagement letter

should leave nothing to memory or chance. **Not only invaluable protection in case of ethical complaints, it also shows the client that you take your relationship with the client seriously.**

Suing a client for lack of payment. Most often, when an attorney sues their client for fees, the client responds with a malpractice claim. By the time you have to pay your attorneys expenses, recovering the fee disputed washes out. Then of course is the malpractice claim and the problems arising. Never allow a client to get so far behind on their legal bills and keep a tight rein on accounts receivable.

File Documentation. No matter which resources tell you how to write a court document, you absolutely have to be sure the document complies with current court rules. Every court has rules about organizing and presenting documents. In fact, every court has its own rules in addition to rules from either the state or federal court system. The rules tell how to notify an opponent that you are suing him, how to format court documents, what kind of information is required in court documents, how much time someone has in which to file a document, what options the opponent

has for responding to that document and what kind of action the court will take regarding the document (i.e. whether the clerk will file it, whether a hearing will ensue, etc…). Make sure all communication is in writing.

Missing Important Deadlines: Countless attorneys have missed filing deadlines over the years, and state and federal courts routinely dismissed their client's tardy appeal as a consequence.

MALPRACTICE!!!!!!! If you have not invested in a case management software program, YOU SHOULD. There are some that can be purchased for

a few hundred dollars all the way up to several thousands all depending upon your needs and the size of your firm. Case management software provides your firm with the customizable tools to reduce administrative time, increase operating efficiencies, reduce clerical errors, effectively maintain critical deadlines, and track and report financial results on cases and promotional efforts

Addiction Treatment or lack of: A lawyer is twice as likely to need an addiction treatment center than a non-attorney. The fact that attorneys are not taking up their fair share of treatment center beds,

and then some, should be cause for great concern. Roughly 10% of American adults suffer from alcoholism, which is defined as a frequent intoxication that negatively impacts health, quality of life, and professional ability. However, a very conservative estimate puts the number of alcoholic US lawyers at approximately 20%. This is an enormous problem that cannot be easily solved and likely results from a combination of alcoholism risk factors and personality.

Moral Issues: Do not bend the rules. It is not worth it.

Conflict of Interest: You have a moral and legal opportunity to act in the best interest of the client.

A clash between professional obligations and personal interests arises if the individual tries to perform that duty while at the same time trying to achieve personal gain.

Chapter 3

Policy definitions to consider Claim Based:

Most policies are claim based policies. The claims-made approach is commonly used with professional liability insurance such as directors & officers' coverage, medical and legal malpractice insurance, and errors & omissions policies. In a claims-made policy, coverage is triggered by the date the insured first became aware of the possibility of a claim and notified the insurer of such knowledge. The insurance policy in force on the date the insured gained such awareness is the one which responds to the claim.

The policy period for a claims-made policy will extend backwards in time to a "retroactive date" years before the policy was purchased. Therefore, the policy will provide coverage for claims made today stemming from actions or events all the way back to that retroactive date. A claims-made policy requires the claim be made during the policy period or an extended reporting period ("ERP"). The most widely used claims-made policy is the "Claims-Made & Reported" form. This form provides coverage only for losses which: (a) occurred after the retroactive date and, (b) were reported during the policy period or ERP.

In contrast is the less commonly used "Pure Claims-Made" form. The major distinction between this form and the claims-made & reported form is that with the pure claims-made form, the insured need only report the claim “as soon as practicable,” or “promptly,” and not necessarily during the policy term.

The Hammer Clause: Because of the big awards that can result from liability lawsuits, many insurers try to settle these cases, regardless of whether the insured is actually responsible for the claim being asserted by the plaintiff. Plain and simple, it is about the money.

You may not always want to follow their insurer's inclination to settle, however. In many professional businesses, a settlement can be read as an admission of wrongdoing or incompetence by the defendant, and could adversely impact the defendant's reputation and business brand. Hammer clauses act to compel insureds to comply with an insurer's decision to settle a case rather than fight it out in court. In general, there are two types of hammer clauses, "full" hammer clauses and "modified" hammer clauses.

A full hammer clause basically informs the insured that if the insured goes against the insurer's recommendation

to settle, the insured will be responsible for any judgment won by the plaintiff plus legal fees that go beyond the settlement offer and legal fees up until the settlement offer. Some full hammer clauses even go as far as to hold that if an insured bucks a settlement recommendation from the insurer and loses the case, the insured will be on the hook for the entire settlement and legal fees cost.

A modified hammer punishes recalcitrant insured's less severely than the full hammer. In a modified hammer clause, the insurer will agree to pay a certain percentage over the settlement amount if the insured decides to

disregard the insurer's settlement recommendation. The percentage varies from policy to policy, but is usually either 50 or 70 percent.

Obviously, because a policy with a modified hammer clause presents more risk to the insured than one with a full hammer clause, premiums for modified hammer policies are likely to be more expensive.

Defense within the limits: "Defense inside the limits" means that the cost of defending the claim and the actual damages paid are all part of the "per claim" limit of liability.

"Defense outside the limits" means that the cost of defending the claim is in addition to the per claim limit of liability. Often, an insurance company that offers this option will cap the total amount it will pay in defense costs to the each claim limit of liability. Because of the additional amount of coverage available, the "defense outside the limit" option is usually more expensive than the "defense inside the limit" option.

Death or Disability: Many companies provide for coverage beyond the term is a lawyer dies or becomes disabled at no additional premium.

Tail: Several insurance companies allow a retired attorney to extend coverage at a modest cost. Usually 1,2, or 10 years extensions are offered. If a retired attorney decides he want s to practice again, the tail will not cover those acts if a challenge occurs.

Deductible: A larger deductible will make a difference in the premium up to a point. As some point, the larger deductible will not change the premium in a large way.

Chapter 4

How to save MONEY on your Professional Liability Insurance policy Today!

Just like when your purchase an automobile, there are a lot of extras that determine the price of that car. OPTIONS! Color, a sunroof, GPS, and a CD with TV or not all determine what you will pay for that car. All options added most likely add to the price. The pricing of a policy should be the same. Deductibles, defense costs (in or out), extended reporting period time, etc. all should, in theory, when and if all things were equal, added together would become the premium paid.

This is not always the case. You should look for underwriters who specialize in Lawyers Professional Liability. Pricing from a suggested MSRP (Manufacturers Suggested Retail Price) or a suggested price per attorney per years of experience may cost you money. Many underwriters wear many different hats. They may underwrite not only attorneys, but also physicians, plumbers, other professionals. Find the underwriter that concentrates only on attorneys. They create custom priced policies instead of adding up the actuarially MSRP of each component.

They should, and most often do, understand your business better than a generalist. Typically, the attorney focused underwriter can **immediately save between 20-25%** off your current policy. Policies with the same benefits- same limit, deductibles, insurance ratings- are priced with thousands of dollars of difference.

Ratings of a Insurance Company

The ABA (American Bar Association) web site has a directory state by state of insurance companies. Most insurance companies are rated "A".A.M. Best Company is a global full-service credit rating agency dedicated to serving the insurance industry.

It began assigning credit ratings in 1906, making it the first of today's rating agencies to use symbols to differentiate the relative creditworthiness of companies. Best's Credit Ratings are independent opinions regarding the creditworthiness of an issuer or debt obligation. Best's Credit Ratings are based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance and business profile, or, where appropriate, the specific nature and details of a debt security.

Go to www.ambest.com and look up your insurance company and the rating given by A M Best. The ratings are not a guarantee that an insurance company will perform, but it should be of some help in your research and in the company you do business with.

Buy the coverage needed at the best available price.