

# Choosing Coverage What You Should Know

## Choosing the Right Malpractice Coverage for Your Needs.

Picture yourself calling your malpractice carrier to report a claim, only to learn that the alleged damages far exceed your policy limits, exposing your personal assets. And then you may have to come up with \$5,000 or \$10,000 to pay your deductible if an indemnity payment is made. To avoid this nightmare, choose malpractice insurance coverage for you and your firm carefully. You will want to choose the limits of coverage and the deductible that best suit the type of law you practice, and your ability to pay any amount due under your deductible should a malpractice claim be asserted against you. This article is designed to assist you in choosing the correct limits and deductibles for your professional liability policy. First, we will address the issue of what limits of coverage you should obtain, and then the amount of the deductible.

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## The first consideration is the limits of coverage.

Your policy will have a per claim limit of liability and an aggregate limit of liability.

### Per Claim Limit:

First, let's talk about selecting the per claim limit of liability which is the amount that will be available to cover both the damages and defense costs arising from any one incident or event that results in a claim. You need to choose a per claim limit that would cover your largest typical file, since you don't know which file might prompt a claim. One of the best ways to determine this figure is to review the files in your office, both open files and recently closed files. Determine the maximum value of the file, i.e., if the work is transactional, determine the amount of the transaction, and then add in items such as potential interest. If the case is a personal injury matter, evaluate the maximum damages. By performing this exercise, you should have a pretty good idea of the limit of coverage you

need per incident to protect yourself from a malpractice verdict or settlement which would exceed your limits and subject you to personal exposure. Please remember to consider the nature of the work done by all of the lawyers in the firm in order to choose the appropriate limit.

### Defense Costs:

Also, when deciding on your limits, it is important to consider how the defense costs of a claim might impact your limits. Under many professional liability policies, including MLM's, the per occurrence liability limit is shared between both the defense costs and the indemnity payment for that claim. Thus, when picking your per claim limit, it is recommended that you consider adding together a sum that reflects the possible defense costs plus the dollar value of an indemnity payment on what would be a serious/severe claim for your type of practice.

### Aggregate Limit:

Second, determine the aggregate limit of coverage you will need. This aggregate limit is the maximum dollar amount available to pay all claims which arise within that policy year. If your aggregate limit is equal to the per claim limit, one claim could exhaust not only your per claim limit, but also your aggregate limit for that policy year, again leaving you at risk for personal exposure should another claim arise during that same policy year. Initially, you should begin by working off of a

single claim scenario to select your per claim limit and then consider the size of your firm and the potential for more than one claim in the 12 month policy period. Thus, many firms choose an aggregate limit that will allow for at least two significant claims during the policy year. Remember, you're planning for the worst case scenario.

### **Next, you should determine an appropriate deductible.**

The simple answer to this analysis is what can I afford to pay in the event an indemnity payment is made by MLM on my behalf. Remember the deductible on MLM's professional liability policy is a loss only deductible unless otherwise designated by endorsement. [Always check your individual policy to determine the status of your

deductible with MLM.] This means your deductible will only be triggered if an indemnity payment is made on your behalf by MLM. That said, many attorneys believe that they won't have a claim made against them and therefore choose a high deductible in order to try to save money. Unfortunately, when a claim does arise and is paid, the attorney has difficulty paying the deductible because he or she has purchased a deductible that is too high. Generally, the difference in premium for a lower deductible is not significant. For example, for one attorney with a \$1,000,000 per claim, \$3,000,000 aggregate policy, the difference between a \$10,000 deductible and a \$5,000 deductible averages \$102. The difference between a \$5,000 and a \$2,500 deductible averages only \$64. (These amounts may vary depending on

the claims history, claims-made years, firm size and geographic location of an attorney.) Is it worth the risk of having to pay an extra \$2,500 in order to save \$64? Clearly this is a cost-benefit analysis, and one of the additional factors to consider is whether you are in a "highrisk" area of practice. Generally, we see the most claims, in terms of frequency and in the amount spent in defense and settlement, in the areas of plaintiff's personal injury and general business.

### **Conclusion:**

Taking a little extra time to fully evaluate your practice and your ability to pay a certain deductible is a beneficial and necessary exercise. Don't assume that you won't have a claim - even a frivolous one can generate defense costs. More and more attorneys are being sued for malpractice. Some experts estimate that today's new attorneys will have three to four claims brought against them during their careers. Making sure you have the correct coverage will ensure that you have one less worry when you are faced with a malpractice claim. Also, when it's time to renew your policy, be sure that your original analysis still fits your practice, and if not, make the necessary changes. Take the time to protect yourself, your clients and all that you've worked for. You will certainly thank yourself if you are faced with a claim.

**Note: Nothing contained in this article is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This article and any forms and agreements herein are intended for educational and informational purposes only.**

### **Considerations at a glance**

- Firm Size (Revenue and Attorneys)
- Firm Assets (Ability to pay a claim and remain solvent)
- Areas of Practice (Frequency or severity driven)
- How are Related Claims Treated Under the Policy
- How are Claims Against Multiple Insured Treated Under Policy
- Is the Aggregate Limit Equal to the Each Claim Limit
- What are the Market Conditions
- Firm/ Attorney Claim History
- Claim Experience of other Similar Firms in the Area
- Propensity of Firm to Sue a client for Fees
- Potential Conflicts of Interest
- Value of Matters Handled by the Firm (e.g. Large transactinal practice versus small PI cases)
- Whether Defense Expenses are Within the Limits of Liability or in Addition Thereto