



Understanding Professional Liability Insurance

MESSAGE FROM THE CEO ON LAWYERS CHOOSING TO BE UNINSURED

There are many reasons why a lawyer might choose to practice uninsured. Some of the more common (and most overlooked) reasons include the following: the belief that they are immune from claims because of their legal expertise; the nature of their practice (i.e., areas prone to claims activities); and the relationship with their client (they wouldn't sue me, we're friends). Then too, some lawyers believe that the threat of malpractice claims is overrated and does not justify the cost of coverage. There are those who believe that the risks are real, but feel that their practice cannot bear the cost of insurance and, amazingly, others who feel that the best defense in the event of a claim is lack of insurance, thereby making them less appealing as a "target" for contribution. Obviously, there are those who for one reason or another, are unacceptable to the insurance market and must perforce remain uninsured. Finally, there are those who probably just forget or don't take time to secure coverage.



It may be impossible to change the attitudes of lawyers who practice without insurance, but there should be no illusions about the consequences. No private practice lawyer is immune from a malpractice claim unless they represent only themselves. Superior knowledge and good work habits do not guarantee immunity. Since malpractice begins as an opinion and must later be proven as fact, demonstrating innocence can be just as expensive as indemnifying a legitimate injury. These claims really do happen and are happening more frequently.

The false thrift of going bare becomes painfully clear if a lengthy court action takes the lawyer away from their practice (thereby cutting into earnings), or if defense counsel must be paid out of pocket. A malpractice claim is never expected and virtually impossible to predict. The sharing of significant financial risk through common pooling of resources, that is, an insurance program, is still the most economical way to protect a law practice. If the premium is unaffordable, how much more so the cost of even an average malpractice claim.

In addition to protecting the practice, there is the important question of protecting the client. I'm not aware of any evidence suggesting that aggrieved parties refrain from suing their lawyer if they believe him to be uninsured. On the contrary, many disasters have befallen lawyers in just such a position. In any case, the image of a lawyer practicing in an asset-free firm with a client-be-damned attitude is hardly one to be admired or sought after and sets up negative perceptions in the public mind. Having professional liability coverage demonstrates the proper level of ethical responsibility to the client.

While we cannot completely evaluate the phenomenon of the uninsured lawyer, we sincerely hope that those currently without coverage will seriously rethink the wisdom of their position, for the sake of both lawyers and their clients.

Sincerely,

Steve Brady

Chief Executive Officer, Minnesota Lawyers Mutual

MLM's New Lawyers Program offers a policy with affordable coverage that provides new attorneys starting a solo practice with an affordable alternative to "going bare."

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