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TO: California State Bar Members and Firm Administrators

FROM: Dan McKenna, JD, RPLU

RE: Purchasing Professional Liability Insurance

### **Insurance / Claims – Made and Reported Policy**

**Claims Made Description** The carrier insuring your firm when a claim is made against your practice will be covering you so long as you have prior acts coverage going back to the time the alleged act or omission occurred.

The importance of timely reporting a claim or potential claim cannot be stressed strongly enough. This is even more critical when changing carriers. Failure to report a claim during the correct policy period can result in denial of the claim. It is also to the insured's advantage, as you will reset your limits for the next policy period.

### **Coverage / Limits & Options**

When deciding on adequate limits one should recognize that the limits in effect when a claim arises are applicable not the limits when the alleged error occurred. Reflect on your past exposures and their monetary value as well as on your current workload.

If your practice or your firm's focus is in areas of law where you can anticipate a costly defense (extensive discovery, need of experts) consider a Claims Expenses Outside Policy Limits Endorsement (non eroding limits). This endorsement is strongly recommended to firms with low limits. Unfortunately it is becoming a harder endorsement to buy of late.

Consider a Per Claim deductible; it can save you 5% on your premium. A \$5,000 deductible is usually only \$240 more expensive than a \$10,000 deductible.

### **Carrier**

There are benefits to establishing a long term relationship with your professional liability carrier as opposed to jumping from carrier to carrier to save a few premium dollars each renewal. When evaluating a firm's claim history, the claims expenses and indemnification is often weighed against the total premium paid by the firm to that particular carrier over the years. A firm with a long premium history is often deemed still profitable to the carrier and less likely to be nonrenewed.

When choosing a professional liability carrier, focus not only on the carrier's financial ratings

but also on the carrier's history / longevity in the profession and in California. An established carrier with a long history is more likely to be a viable carrier during the coming years. Being insured by a carrier that elects to jump out of the market is not a pleasant experience when you are trying to renew coverage, particularly if you've had a recent claim. Further, an established carrier will have a more experienced claims dept. and stronger network of defense panel counsel. A strong claims department can often save you costs (deductible expense) related to a claims defense. Analytical work performed by your carrier's claims people is not charged against your policy limits. This cost savings can also be appreciated through future renewal rates.

### **Extended Reporting Periods**

The longer time options available on "tail" coverage, the stronger the policy form. For firms or sole practitioners focusing in estate planning, an unlimited extended reporting period option is a must.

Purchasing a "tail" or receiving a free retirement "tail" from a carrier expected to be active in attorney's professional liability during the years ahead is advantageous over buying a "tail" from a carrier no longer writing this type coverage in your state. The claims handling ability of such a carrier will suffer and thus, so will your financial situation.

There are certain issues in this area that should be addressed upon leaving a firm. Be aware that when an attorney exits a firm, his or her past legal work is usually covered by that firm's policy. If an attorney is concerned about the firm's continued existence or continuation of coverage, the attorney may want to push for the purchase of a "tail" policy at that point in time or try to get career coverage going forward.

The cost allocation of a "tail" policy should be discussed among partners with their carrier prior to the point when dissolution of the firm is imminent.

### **Marketplace Update (to the best of my understanding)**

Please contact our office or see the February 2005 edition of the California Lawyer magazine for information regarding California carriers. At the time of this article ( March 2005) and over the past three years far more carriers have exited the California market than entered.