

How to Use This Guide

This annually updated guide provides nuts and bolts information for making an informed decision about selecting legal malpractice insurance. It will familiarize you with the terminology and practices common in this specialized area of insurance. The articles provide an overview of the key issues that most lawyers encounter when evaluating their professional liability insurance needs.

The pull-out chart, comparing carriers who provide legal malpractice insurance throughout the country, allows you to review key policy information at one glance. The state-by-state listing of carriers identifies which carriers are admitted and not-admitted for each state and explains the implications of those insurance industry designations. The insurance company contact listing provides a central number for further information for a particular carrier.

The American Bar Association does not endorse or sponsor any legal malpractice insurance carrier. This resource is intended to aid the legal community in selecting an insurer who best meets the needs of the attorney or firm. While every attempt is made to insure accuracy, this publication does not constitute a guarantee of any particular coverage by a carrier. The terms outlined in an executed policy are the only binding statements of coverage.

A Note About Ratings and Financial Strength

It is important to purchase a policy from a financially sound company. How do we know, or find out about, the financial strength of a particular company? While not a fool-proof guarantee of financial strength, ratings given by recognized rating agencies, such as AM Best and Standard & Poor's (to name two), can be a helpful barometer. Rating agencies look at financial stability by considering factors such as breadth of business, quality of investments, extent of surplus, and reserving practices. While some of this basic information may be available to you from an insurance company's annual statement (which is usually on file with the insurance regulatory agency in the state in which the company is domiciled) rating agencies digest this information for you. To view ratings, you may choose to visit one of the websites contained in the (nonexclusive) list below:

www.ambest.com

www.standardandpoors.com

www.weissratings.com

For further information on the selection of lawyers' professional liability coverage, contact the Committee staff at 312/988-5754.

Understanding Your Insurance Coverage

Your insurance coverage can be broken down into the following elements:

- The Application
- The Declaration Sheet
- The Insurance Policy, composed of:
 - Definitions
 - Coverage Agreements
 - Exclusions
 - Defense and Settlement Provisions
 - Limits of Liability
 - Conditions
- Endorsements

Only those elements contained in the insurance policy itself make up the insurance “contract.” The application must, in some way, be attached to the policy before it is considered an official part of the policy. However, many companies today expressly state that the application will be included as part of the insurance contract.

Insurance contracts are usually contracts of “adhesion.” In other words, because the insurance company dictates the terms of the contract, in a dispute regarding coverage you, the insured, will be looked upon more favorably than the insurance company.

The wording in the insurance policy itself is intended to provide protection for the insurance company and to eliminate loopholes in coverage. This does not necessarily mean that coverage disputes will be adjudicated in favor of the insurance company. Policy wording is open to interpretation by the courts.

Each aspect of your policy coverage is discussed below.

The Application

In the application, you provide information about yourself and your practice. It is extremely important to complete all of the application; don’t leave anything blank. Be truthful. The application often becomes part of the policy; if you withhold relevant information, the company may have grounds for voiding your policy. If you encounter a broker who advises you to withhold information, get another broker.

If you have “high-risk” activities or claims and fear that these may preclude coverage, do not succumb to the temptation to avoid giving the underwriter

complete information. The more information you give the underwriter, the better he or she can evaluate the risk and charge you a fair price. Cast your explanation in terms that show the underwriter why he or she should not be afraid to insure you. In other words, help the underwriter find a way to provide coverage, not decline it.

Disclose all past claims and explain any extenuating circumstances, mitigating factors, and remedies taken. Demonstrate to the underwriter an awareness of the problem and describe fully all steps you have taken to solve it. The rule of thumb should be “the more, the better.”

The Declaration Sheet

The declaration sheet outlines the terms of coverage, specifies the beginning and end of the policy period, states your limits of liability on a per claim and aggregate annual basis, and specifies your deductible (either per claim or annual). The “Named Insured,” which is identified on the Declaration Sheet, will be further defined in the insurance policy itself.

If the policy includes coverage for “prior acts” (that is, coverage for acts that occurred prior to the policy period), the date on which the prior acts coverage is effective (the “retroactive date”) will also be stated on the Declaration Sheet. If not, look for an attached endorsement that will provide the policy’s specific retroactive date.

The Insurance Policy

The insurance policy itself:

- defines terms used in the policy (“Definitions”);
- specifies for what services, activities or actions coverage applies (“Coverage Agreements”);
- states specific activities that are not covered (“Exclusions”);
- explains your and the company’s rights regarding settlement, such as whether or not your consent is required to settle and who has the right to select defense counsel (“Defense and Settlement Provisions”);
- states what and how the policy will pay (“Limits of Liability”); and
- stipulates certain conditions to coverage (“Conditions”).

Each policy is written differently, and the items listed above may appear in

different locations with different headings in each policy. However, by reading the detailed descriptions below, you should be able to locate them no matter where they are found within a policy.

Definitions. The definitions describe for who coverage is provided. Terms to look for include:

- **Named Insured.** The “Named Insured” is usually defined as the partnership, professional corporation or individual names on the Declaration sheet. Other lawyers covered by the policy are usually listed as “additional Insures,” or simply “Insures.” Make sure that you have coverage for everyone who should be covered and for acts on behalf of the firm (Named Insured) or without such a limitation.
- **Predecessor Firms.** If the term “predecessor firms” is included in the definitions, coverage applies to any predecessors of the existing firm.
- Former lawyers, partners, and shareholders.
- Current lawyers, partners, and shareholders.
- Future lawyers, partners, and shareholders.
- Former, current, or future non-attorney employees.
- Attorneys serving in an “Of Counsel” capacity.
- Heirs, executors, administrators, legal representatives, and assigns of the insured.

Coverage Agreements. Services, activities or actions that may be covered include:

- professional services as an attorney;
- services as a notary public;
- services as a title agent (sometimes by a special endorsement to the policy);
- an attorney or non-attorney who causes personal injury;
- an attorney acting as trustee or executor; and
- pre-or post-judgment interest, appeal bonds, and related costs.

In addition, the policy may specify the following coverage:

- All prior acts of the firm and all members of the firm, including employees, when the insured, prior to the policy period, had not notified any previous insurer of any act and the insured had no reason to believe a breach of professional duty had occurred;
- Claims made and reported during the policy period;

- Claims made and reported no later than 60 days after the policy terminated;
- Claims first made after the expiration of the policy, providing that the insured;
 - (1) had reasonable knowledge that a wrongful act occurred and a claim might be made and
 - (2) reported the suspected wrongful act to the insurer during the policy period;
- An optional extended reporting period (additional coverage for claims reported after the expiration of the policy for errors committed within the policy period), usually purchased within 30 days of the policy’s expiration for a specific time period and for an additional premium; and
- An optional retired or non-practicing attorney’s extended reporting period.

Exclusions. Whereas the coverage agreements provide coverage, the exclusions take it away. If an activity is in the exclusions section of the policy, you do not have coverage for that activity, no matter what the other sections of the policy state. It is up to the company if a defense (with no obligation to pay on behalf of) will be provided.

Each company’s policy differs, so it is extremely important to examine exclusions carefully. Listed below are exclusions sometimes found in professional liability insurance policies:

- dishonest acts
- fraudulent acts
- criminal acts
- malicious acts

(For the four categories above, however, coverage is usually afforded to innocent parties.)

- vicarious liability (liability acquired by law or by contract for the acts, errors or omissions of others)
- claims made by or against a business enterprise owned or controlled by an insured (refers to claims by or against the business itself)
- claims arising out of or in connection with a business enterprise owned or controlled by an insured (refers to third-party claims)
- an attorney’s activities as an officer, director, etc., of a business not owned or controlled by the insured)

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- services as a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA)
- RICO (Racketeer Influenced and Corrupt Organization Act) claims
- activities as an elected public official
- worker's compensation claims
- advertisers' liability
- loss sustained as a beneficiary or distribute of a trust or estate
- bodily injury or property damage
- real estate claims
- claims by regulatory agencies
- notarization of a signature without the physical appearance of the signatory
- claims involving an insured versus another insured
- discrimination
- sexual harassment
- prior acts (acts committed before the policy period) where the insured had knowledge of or should have foreseen the claim
- investment advice
- securities
- punitive damages
- fines, statutory penalties and sanctions
- business enterprises liable for contamination or pollution of the environment (often contained in an "Endorsement" to the policy)
- loss related to nuclear reaction, radiation or contamination (often contained in an "Nuclear Energy Exclusion" to the policy).

Defense and Settlement Provisions. Issues covered in this section of the policy include:

- whether the insurer has the right to select defense counsel in the event of a claim. The policy language may explicitly state the right of the insurer to select defense counsel (for example, "Selection of defense counsel will be at the prerogative of the Company"). Alternatively, the right to select defense counsel may be implied in the right to defend a claim (for example, "The Company shall have the right and duty to defend any claim");

- whether the insured has a right to select defense counsel (the opposite of the situation above). In this case, however, the insurer may have the right to approve the choice of defense counsel in advance or the right to require the insured to revoke the selection;
- whether the insured's consent is required to settle a claim. If the insured's consent is required, policies often place a limit on what the insurer will pay if the insured refuses to settle.

Limits of Liability. In this section of the policy you will find the following:

- The specific limit of liability of each claim.
- The aggregate liability on a firm basis (the total limit of liability for all claims).
- The per claim deductible (that is, the deductible applies to each of every claim separately) or the aggregate deductible (the total deductible to be paid in a single year). If it is possible for a policy to include both types of deductible, when there is a per claim deductible and a ceiling on the total deductible to be paid in a single year. Deductibles may also be available for "damages only" which means you pay your deductible only in the event of a settlement (loss) or judgement. This type of deductible, also known as a "loss only deductible," may be purchased on a per claim or annual aggregate basis.
- Whether claim expenses (defense costs and other expenses) are included in the limits of liability. Keep in mind that claim expenses are not often included within the limits of liability. The means that the cost of defending a claim, even if the claim is eventually dropped, reduces your limits of liability, effectively shrinking the amount of coverage you actually have.
- Whether the policy provides a "claim expense allowance." This provision, which is becoming more prevalent in the marketplace, provides an allowance (e.g. \$50,000) for claim expenses, in excess of the deductible, and in the aggregate for all claims. Using this example, this means that after paying the deductible, you would be allowed \$50,000 in claim expenses before your limits of liability are drawn down to pay for claim expenses.
- Whether two or more claims arising out of a single act or series of acts are considered a single claim. If they are considered a single claim, the policy may state that the policy year in which the first act is reported is considered the claim reporting date.

Conditions. The section of the policy may include:

- a requirement that the insured provide timely notice to the insurer of all claims and potential claims;
- a requirement that the insured assist and cooperate with the insurer (including examination and interrogation by a representative of the insurer, attendance at hearings, depositions and trials, assistance in effecting settlement, securing and giving evidence, and obtaining the attendance of witnesses);
- a provision that, in the event the insurer makes a payment under the policy, the insurer is entitled to any rights the insured has to recover what was paid (subrogation);
- provision of coverage in excess of other available insurance. Since all insurers claim that their coverage is in excess of other coverage, defacto “sharing” arrangements exist by which each company takes a pro rata portion of the coverage when policies overlap;
- provisions regarding the arbitration of claims. Arbitration may be required or permitted, or it may be prohibited without the insurer’s consent;
- at least a 30-day notice of cancellation of the policy by insurer.

Endorsements

Endorsements change coverage in some way on a firm-by-firm basis. Insurers use endorsements to change coverage on a selected basis, without changing the policy for everyone. Endorsements can either add coverage (e.g. to include coverage for work as a title agent), change coverage (e.g., to place defense costs within the limits of liability), or limit coverage (e.g., to exclude a specific lawyer from a firm’s coverage or to exclude claims resulting from nuclear reaction, radiation or contamination). Typical endorsements exclude coverage for business enterprises liable for contamination or pollution of the environment and for loss due to nuclear reaction, radiation or contamination.

To evaluate specific insurance policies, see the Checklist for Purchasers of Professional Liability Insurance.

How Much Will It Cost?

Malpractice insurance rates depend on a number of factors and vary by company. Discuss your particular circumstances with a reputable broker or with the insurance company itself in order to select the best rate for your needs. Get competitive quotes and remember, cheaper isn't necessarily better. Make sure that the insurance you're paying for really covers the activities of your practice.

The factors that determine the rates you will be charged include:

- The limit of liability selected.
- Your area of legal specialty. You can expect to pay more for coverage if you practice, for example, in high-risk areas such as securities, banking and real estate. You may even have to pay an extra premium to obtain the specific coverage you need.
- Your personal claims history. This includes all attorneys in the firm.
- The state of the insurance market. In "soft" markets, rates are lower and coverage is more available than in "hard" markets, when renewal of an existing policy may be more difficult to obtain or prohibitively expensive.
- The deductible you are willing to pay. Obviously, the higher the deductible you are willing to assume, the better the rates will be.
- Your geographic area and the litigation atmosphere in your locale. The claim experience of your risk pool (i.e., other lawyers in your geographic area). Be aware that you may experience problems, in that you may be classified in a higher or lower risk group than you actually are. For example, if you practice in a rural area, you may nevertheless be limped together with lawyers in urban areas of your state, placing you in a higher risk group. Try to find out into which risk pool you fall and, if you fall within a higher risk group than you should, do what you can to be placed in a lower risk group.
- Firm size. Some companies offer premium reductions for firms with more attorneys.
- Law office management. Some Companies may allow premium credits if the law firm has instituted malpractice prevention controls, such as an effective docket control system.

Underwriting

In "underwriting" or evaluating your risk, the insurance company will look at a variety of factors based on information furnished in the application. The underwriting criteria used by insurance companies vary. The following criteria are examples.

Sample Insurability Criteria

1. Claims experience:
 - a. Number of claims or incidents per lawyer per year. (Note: Claims need not result in lawsuits to be considered relevant by an underwriter.)
 - b. Anticipated expense of these claims (both indemnity and legal defense) relative to the anticipated premium from the insured.
 - c. Nature or quality of the claim, e.g., meritorious or not, frivolous, ordinary negligence, gross negligence, or criminal conduct.
 - d. Lawyer's degree of fault, e.g., clear malpractice, statute of limitations, or vicarious liability (a lawyer who has left the firm).
2. Rejection or refusal to renew by any other carrier. (Underwriters will regard with suspicion a lawyer who is leaving a less expensive carrier.)
3. State bar disciplinary proceedings against the lawyer.
4. Lawyer's predisposition to suing clients for fees.
5. Significant increase in limits or decrease in deductible requested.
6. Nature of practice, e.g., does the lawyer participate in client investments? Does the lawyer carry on other businesses or professions?
7. Attitude and cooperation of the lawyer in resolving claims and providing necessary information to evaluate insurability; attitude with client; has the lawyer demanded coverage of an insurance company on doubtful claims?
8. Rating with Martindale-Hubbell and membership status with state and national bar associations.
9. Practice for financial institutions while also serving on the board of directors and/ or maintaining a financial interest in the institution.

Sample Red Flags

Each insurance company individually determines those situations that are considered to be outside of its standard underwriting guidelines. However, the following offer some sample “red flags” for new or renewal risks that may be submitted to the company’s general manager or underwriting committee for approval:

1. Two or more claims within the past year.
2. Three or more claims within the past ten years (depending upon size or firm).
3. Major claim.

4. Pattern of claims.
5. Uninsured for the immediate preceding five years.
6. Non-payment of deductible.
7. Non-cooperation of insured.
8. Any bar disciplinary proceeding.
9. Existing business relationship with a client.
10. Maintenance of other professional licenses.

How to Prevent Gaps in Your Insurance Coverage

What should you do to prevent gaps in your insurance coverage? Such gaps can occur in one of two ways:

- You have no “prior acts” coverage for acts committed *prior to* the effective or retroactive date of your current policy or
- You have no “tail” coverage for acts committed during your current coverage but reported after the policy expiration date.

Some pointers to consider in either case:

1. Keep in mind that you generally have only *30 days* after the expiration of a policy to purchase “tail” coverage (formally referred to as an “extended reporting period” or “extended reporting endorsement”). Therefore, you need to examine all of your options quickly.
2. Who is the insurance carrier at your previous firm? Call the carrier and ask whether you can purchase tail coverage on your own.
3. Who is the carrier at your new firm? If the firm is not purchasing prior acts coverage on your behalf, ask the firm if you can pay an extra premium to obtain prior acts coverage.

4. Even if you think that the risk of a claim from work done at your old firm is low, you need to consider that, with any claim, the cost of defending against such a claim could be high. If it therefore important to consider carefully the need to either tail or prior acts coverage.
5. If you are leaving a firm: Just because your previous firm has assured you that it will maintain its malpractice coverage, don’t assume that this means that you will continue to have coverage. The firm will have coverage for your errors, but you may have individual coverage.
6. If you are changing from private to corporate or non-practicing status, leaving to have a child, going into teaching, or switching to a non-legal career: keep in mind that you still need to purchase “tail” coverage for past errors that may be discovered in the future. You may think that you are covered, but don’t assume it. The only way to make sure is to find out.

AN IMPORTANT NOTE: If you are an attorney or law firm that is considering hiring another attorney, you should find out whether you will be assuming liability for the acts of that attorney prior to joining your practice (“prior acts”) and, if so, what impact it will have on your insurance coverage.

What to Do if You Have Been Declined Insurance Coverage or Have Special Coverage Problems

Once you have been declined malpractice insurance coverage by a carrier, obtaining coverage from a second carrier may be difficult. For one thing, a second carrier is likely to ask whether you have been declined by another company. Second, the same problem that caused the original declination of coverage is still likely to exist, making your chances of securing coverage doubtful. The same holds true if you have special coverage problems (e.g., a large percentage of your practice is in securities). However, there are some things you can do to increase the chances of obtaining coverage for yourself or your firm.

Helpful Tips

1. Provide as much information as possible to the insurer up front. Don't wait to be asked about past claims or potential problem areas. Be as forthcoming as possible. Avoid answering any question on the application form with "not applicable." Explain every thing that might be declinations of coverage.
2. Explain fully your firm's docket control system. Describe the system in detail. Emphasize that you have some sort of cross-checking mechanism by more than one person to ensure accuracy and efficiency. If you are a sole practitioner and have no office staff, explain your circumstances and ask the insurance company to tell you if your system is insufficient and, if so, what you should do to improve your office management procedures.
3. Include on the application form all memberships in professional associations (e.g., state and local bars and the American Bar Association) and attendance at CLE events.
4. If you have problems due to unusual circumstances, make direct contact with an underwriting supervisor of the insurance company. In your situation, what you are trying to do is to override the underwriting guidelines, which have little flexibility. Only an underwriting supervisor has the authority to supersede those guidelines. If you have a broker, have the broker send a letter from you to the manager of the underwriting department with the following basic message: "I realize that I am an exception to your guidelines. Please review my application individually."
5. If you have been declined by another carrier, you face a serious problem. On the section of the application that asks, "Have you been declined for coverage by another insurance company?" answer "yes." Explain why you were declined and what steps you have taken to correct the situation. For example, if you were declined because of inadequate docket control procedures, explain fully the systems that you have implemented. In short, do everything you can to let the insurance company know that you are not a bad risk and that past problems have been rectified.
6. Participate in a "Risk Management Audit Program." This is an audit of the firm's physical location by an independent, skilled auditor. Ask the auditor to specifically comment on your behalf regarding any insurability concerns that the underwriter may have.

What to Do if You Have a Situation That Might Result in a Malpractice Claim

If you encounter a situation that you believe might result in a malpractice claim (e.g., you become aware of an error you have made or important client documents are lost), you first need to assess the probable damage done. Begin by asking yourself these questions:

1. Could this incident cause my client harm?
2. If it were not for this incident, would my client's case be successful?
3. Can the situation be fixed (e.g., can lost documents be replaced, can a deadline be extended be extended)? Answer this question carefully. Often, insurance companies are experts in "righting malpractice wrongs" and can repair a seemingly impossible situation.

Based on your answers to these questions, you'll have to decide whether to report the incident to your client and to your insurance company. Keep in mind the following important points:

1. Under the Model Rules of Professional Conduct (Rule 1.4, Communication), a lawyer has an ethical obligation to keep a client informed about the status of a matter to the extent necessary to permit the client to make informed decisions. A lawyer may not withhold information to serve the lawyer's own interest or convenience. This duty extends to informing the client of any errors committed by the attorney that may result in harm to the client's interest. Failure to disclose errors may result in disciplinary proceedings and a possible loss of the attorney's license.

Failure to inform a client about an error may not in itself exacerbate a malpractice situation. The omission and, by extension, the basis for malpractice exist whether or not the attorney report the omission to the client. Failure to inform the client of an error may not, therefore, cause a new malpractice situation to exist.

In most cases, however, attempts by an attorney to "fix" an error are not successful, and the client ultimately finds out about the attorney's error anyway, setting the stage for a malpractice claim. If the attorney is found liable for malpractice, the ultimate monetary judgement awarded may be influenced indirectly by the attorney's failure to disclose information to the client.

In addition, the statute of limitations for the malpractice claim may be "tolled" (suspended or stopped temporarily from running) if the client is not notified of a mistake or error discovered by the attorney.

The bottom line is that it is in the attorney's and the client's best interest to disclose any errors to the client as soon as possible.

2. All insurance policies include language requiring the insured to give prompt notice to the insurance company of a malpractice claim or suit. This requirement enables the insurer to defend the claim or, when possible, to mitigate or avoid a loss.

In addition, some policies also require the insured to report potential claim situations to the insurer as soon as the attorney becomes aware of such situations. Such language usually requires the insured to notify the insurer when he or she "becomes aware of any act, error or omission which could reasonably be expected to be the basis of a claim or suite covered by this policy...." Read your insurance policy closely. (The language will usually be contained in a section called "Claims" or "Notice of Claim or Suit.") Failure to report promptly incidents or claims to your insurer could jeopardize your coverage.

Once a problem has been reported to the insurer, the insured may have an obligation to keep the insurer up-to-date on any progress made to solve the problem. The insured may thus find himself or herself in a "Catch-22" situation. If the attorney does not report the problem, he or she may not have coverage; if the attorney reports the problem, he or she may have an ongoing responsibility to keep the insurer informed about the situation.

3. Some state bars sponsor confidential, toll-free WATS lines for attorneys to call with questions concerning ethics and malpractice issues. These WATS lines offer the opportunity to discuss with an expert your duty in the situations described above. Find out if your bar sponsors such a program, and don't hesitate to take advantage of this service.

In addition to situations where the *attorney* discovers a mistake, there may be situations where a client expresses serious complaints about the attorney's services. When should you report these to your insurer? Whether or not you believe the complaint to be justified, you should probably report such complaints to your insurer if you think there is even the slightest chance that the complaint might turn into a malpractice claim. The insurer may be able to offer you advice on remedying the situation, enabling you to avoid the prospect of having a claim filed against you. This is especially critical when switching insurers. Your former insurer will require that all claims and any circumstances be reported before coverage expires. Your new insurer will not cover any claim/circumstances of which you had knowledge prior to the effective date. Failure to report a "claim or circumstance" could very well create a gap in coverage.

Checklist for Purchasers of Professional Liability Insurance

How to Use this Checklist

This checklist is intended as a guide to be used in reviewing professional liability insurance applications and policies. The questions are divided into eight sections:

- Application
- Declaration Sheet
- Definitions
- Coverage Agreements
- Exclusions to Coverage
- Defense and Settlement Provisions
- Limits of Liability
- Conditions of Coverage

A policy may also contain attachments called “Endorsements.” Endorsements change coverage on a firm-by-firm or lawyer-by-lawyer basis, either by adding, altering, or limiting coverage. This checklist treats endorsements under either Coverage Agreements or Exclusions to Coverage, depending upon whether the endorsement adds or excludes coverage.

Key issues to consider are listed under each policy section. These issues are followed by specific questions to answer for each policy that you consider.

Before using this checklist, read “Understanding Your Insurance Coverage” for a full discussion of the items included in the checklist.

Malpractice Insurance Checklist

Question	Carrier A		Carrier B	
	Yes	No	Yes	No

Application

Key issues to consider:

- Is the application made a warranty or a representation to the contract? (That is, does the information contained in the application become a legal part of the insurance contract?) Yes No Yes No

Question	Carrier A		Carrier B	
	Yes	No	Yes	No

Declaration Sheet

Key issues to consider:

What are the terms of coverage?

- What is the policy period? _____
- What are the limits of liability? _____
- What are the deductibles? _____
- Who is the “Named Insured”? _____
- Is there a retroactive date for prior acts coverage? Yes No Yes No

Does the declaration sheet:

- Include a “retroactive date” (an effective date) for prior acts coverage (coverage for acts that occurred prior to the policy period)? (See endnote.) Yes No Yes No

Definitions

Key issues to consider:

- Is coverage provided for all persons for whom the insured is legally responsible? Yes No Yes No
- Are individual lawyers or nonlawyers covered for services not preformed on behalf of the firm? Yes No Yes No

Do the definitions of the insured include:

- Named insured and predecessor firm(s)? Yes No Yes No
- Former lawyers, partners, officers, directors and shareholders? Yes No Yes No
- Current lawyers, partners officers, directors and shareholders? Yes No Yes No

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• Automatic coverage for <i>future</i> lawyers, partners, officers, directors and shareholders?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Former, current, or future non-attorney employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Independent contractors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Attorneys in a "Of Counsel" capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Others, such as heirs, executors, administrators, legal representatives, or assigns of insured?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Coverage Agreements

Key issues to consider:

• Is coverage provided for all legal services performed by the firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the policy cover all prior acts of the firm and of all the individual members, including employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does coverage exist for acts for other than "acts on behalf of the Named Insured," e.g. pro bono or "cocktail party" advice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are the activities of members of the firm as officers or directors covered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the policy cover other business pursuits with clients of the firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are acts in a dual capacity as a lawyer and officer, director or business partner with a client covered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the policy provided coverage for innocent partners in cases where one member of the firm has not complied with the conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• Is the definition of when a claim is made sufficiently broad?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are optional extended reporting periods available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Does the policy provide coverage for:</i>				
• Professional services as a lawyer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Services as a notary public?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Services as a title agent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• An attorney or non-attorney who causes personal injury?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All prior acts of the firm and all members of the firm, including employees, when the insured, prior to the policy period, had not notified any previous insurance company of any act and the insured had no reason to believe a breach of professional duty had occurred? (See endnote.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Does this coverage include:</i>				
• Prior acts of attorneys for professional services before joining the firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Prior acts of attorneys and the firm for professional services with the firm before inception of the policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• An attorney acting as a trustee, executor, administrator, guardian or conservator?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Investment advice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pre- or post-judgement interest, appeal bonds, and related costs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims first made and reported <i>during</i> the policy period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12 Selecting Legal Malpractice Insurance

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
<i>If so, does the policy provide coverage:</i>				
• Regardless of when the error occurred? Or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Only if the error, as well as the claim was made during the policy period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims first made after the expiration of the policy, assuming that the insured:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) had reasonable knowledge that a wrongful act occurred and a claim might be made, and				
(2) reported the suspected wrongful act to the insurance company during the policy period?				
• An optional extended reporting period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• If so, for what period(s) of time is the extended reporting period available?				
• Is there a separate, additional limit of liability?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are there limitations on the types of persons eligible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are there stipulations that the extended reporting period option is exercisable only by the named Insured (and not by "Other Insureds")?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Within what time period after expiration of the policy must this option be exercised?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Is the premium and availability of the extended reporting period guaranteed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Is the extended reporting period available if an insured's license to practice is revoked?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• An optional retired or non-practicing attorney's extended reporting period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• If so, for what period(s) of time is the extended reporting period available?				
• Is there a separate, additional limit of liability?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are there limitations on the types of persons eligible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are there stipulations that the extended reporting period option is exercisable only by the Named Insured (and not by "Other Insureds")?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Within what time period after expiration of the policy must this option be exercised?				

Exclusions to Coverage

Key issues to consider:

• Is the coverage excluded for any services crucial to the firm (e.g. securities, real estate)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are the activities of members of the firm as officers or directors excluded?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the policy exclude other business pursuits with clients of the firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are acts in a dual capacity as a lawyer and officer, director or business partner with a client excluded.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Does the policy exclude coverage for claims brought by regulatory agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Is the coverage excluded for:

• Dishonest acts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• If so, is coverage afforded to innocent parties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Fraudulent acts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• If so, is coverage afforded to innocent parties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Malicious acts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• If so, is coverage afforded to innocent parties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vicarious liability (liability acquired by law or by contract for the acts, errors or omissions of others)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims made <i>by or against</i> a business enterprise <i>owned or controlled</i> by an insured? (Refers to claims by or against the business itself)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims arising <i>out of or in connection with</i> a business enterprise <i>owned or controlled</i> by an insured? (Refers to third-party claims)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Activities as an <i>officer, director, partner, trustee or employee</i> of a business <i>not named</i> in the policy? (Refers to an insured's activities as an officer, director, etc. of a business not owned or controlled by the insured)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Acts in a <i>dual</i> capacity as both a lawyer and as an officer or director?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Acts involving business pursuits with clients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Services as a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• RICO (Racketeer Influenced and Corrupt Organization Act) claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• Activities as an elected public official?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Worker's compensation claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Advertisers' liability?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Loss sustained as a beneficiary or distributee of a trust or estate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bodily injury or property damage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Real estate claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims by regulatory agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Notarization of a signature without the physical appearance of the signatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Claims involving an insured versus another insured?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Sexual harassment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Prior acts (acts committed before the policy period) where the insured had knowledge of or should have foreseen the claim?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Investment advice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Securities work or SEC claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Punitive damages?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Fines, statutory penalties and sanctions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Business enterprises liable for contamination or pollution of the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Loss due to nuclear reaction, radiation or contamination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No

Defense and Settlement Provisions

Key issues to consider:

- Who selects defense counsel?
- Is the insured's consent required to settle claim? Yes No
- Is the agreement to defend claims sufficiently broad to offer full protection? Yes No

Does the policy provide for:

- Selection of defense counsel by the insurance company or by the insured? (See endnote.)
- If the insured has the right to select defense counsel, does the insurance company restrict this right in any way (e.g. by retaining the right to approve the choice of defense counsel in advance or the right to require the insured to revoke the selection)? Yes No
- The insured's consent required to settle a claim? Yes No
- If so, does the policy provide for a limit of payment by the insurance company if the insured refuses to settle? Yes No
- Arbitration of a coverage dispute between the insurer and the insured? Yes No

Limits of Liability

Key issues to consider:

- Are claim expenses included in the limits of liability? Yes No
- Are limits of liability per claim or annual aggregate? Yes No

Question	Carrier A		Carrier B	
	Yes	No	Yes	No

- How are two or more related claims treated? Yes No
 - How are claims against multiple Insureds treated? Yes No
 - Are deductibles per claim or annual aggregate? Yes No
 - Is a "loss only" deductible option available? Yes No
- Does the policy provide:*
- That claim expenses are included in the limits of liability? Yes No
 - If so, does the policy provide a claim expense allowance? Yes No
 - Limits or liability for each claim? Yes No
 - Annual aggregate liability on a firm basis? Yes No
 - That two or more claims arising out of a single act or series of acts are considered a single claim with a single set of limits? Yes No
 - If so, does the policy provide that the policy year the first act is reported is considered the claim reporting date? Yes No
 - That if a claim is made against multiple Insureds, all sets of limits form all applicable policies apply (rather than just one set of limits)? Yes No
 - A per claim deductible? Yes No
 - An aggregate deductible? Yes No
 - That the deductible applies to:
 - Loss payments only? Or Yes No
 - Claim expenses and losses? Yes No

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
Conditions of Coverage				
<i>Key issues to consider:</i>				
• Is there a requirement to give notice to the insurance company of claims or potential claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• At what point does your claim get reported and to whom?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Are there requirements concerning changes in the firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Is the carrier experienced in professional liability claims administration?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Does the policy:</i>				
• Require timely notice during the policy period to the insurance company of all claims and potential claims?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Require the assistance and cooperation of the insured?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• In the event of any payment by the insurer, transfer the insured's rights of recovery to the insurance company (subrogation)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide coverage in excess of other available insurance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide coverage for innocent attorneys in cases where one member of the firm fails to meet the conditions of the coverage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Cover changes in the firm automatically until renewal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide for arbitration of the underlying malpractice claim?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question	Carrier A		Carrier B	
	Yes	No	Yes	No
• Is arbitration required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Is arbitration permitted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Is arbitration prohibited without the insurance company's consent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide at least a 30-day notice of cancellation by the insurance company?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide at least 60 days notice of intent not to renew?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide, if the policy is canceled by the insurance company, that the premium returned will be figured on a "short rate" or "pro rata" basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Provide, if the policy is canceled by the insured, that the premium returned will be figured on a "short rate" or "pro rata" basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Endnotes

Prior Acts Coverage: In order to have a retroactive date on the Declaration sheet, you must have prior acts coverage. Prior acts coverage is an extremely important item. Make sure that, if at all possible, your policy covers all prior acts of the firm and of all of the individual members, including non-attorney employees. Your prior acts coverage may also be limited to acts on behalf of the Named Insured only.

Right to Select Defense Counsel: The policy language may explicitly state the right of the insurance company to select defense counsel (e.g. "Selection of defense counsel will be a the prerogative of the Company"), or the right may be implied in the right to defend (e.g., "The Company shall have the right and duty to defend any claim").