RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

Depleting Limits of Liability—
What's Enough?

Most professional liability policies that law firms acquire are saddled with a policy that is a depleting limits policy: limits that are eroded by the payment of legal costs and other expenses/judgments that decrease the amount available for settlement. Although some policies offer a sublimit for defense costs, these limits are often very modest and do not offer much additional protection. In the event of the exhaustion of such limits or a judgment rendered above and beyond the limits, individual attorneys and the firm may be liable.

It is no surprise to lawyers that the expense of litigation can quickly decrease the limits. While most polices include limits significant enough to cover costs and settlement, the possibility of a catastrophic claim does exist (not to mention multiple claims in the same year), and it is precisely for such a claim that law firms want to ensure the limits will be enough to provide the proper protection. This analysis can be done by reviewing the value of the firm's cases and the firm's practice areas and clearly understanding the firm's exposures in the event of a claim.

Insurance professionals and insurance counsel struggle with the decision of when to settle a case, and when depleting limits are involved the choices become even more difficult. Is it better to settle early to avoid potential personal liability for a client or to continue through the legal system and let the court decide liability? If a claim involves multiple claimants, and perhaps multiple trials, the decision becomes harder. Having the right insurer can make this process much more palatable. With regard to the firm's future insurability, I always tell my clients to "let me worry about that and to resolve the claim in the firm's immediate interest."

The quandary regarding the settlement versus litigation of a claim illustrates the need for selecting the right policy and limits. No law firm wants to find itself in the position of realizing, with the benefit of hindsight, it should have carried higher limits. Furthermore, with insurance rates at an all-time low now is not the time to be underinsured. Working with an experienced agent who knows what kind of limits other similar clients may have can be valuable.

California Civil Code requires that limited liability partnerships have an insurance policy or policies for damages arising out of claims. The total aggregate limit of liability for a partnership with five or fewer licensed persons cannot be less than $1 million, and for five or more licensees rendering professional services on behalf of the partnership, an additional $100,000 of insurance is required for each additional licensee. However, the maximum amount of insurance is not required to exceed $7.5 million in any one designated period.

As with any insurance policy, certain factors specific to each law firm must be considered when determining the best limits for your firm. As part of your annual review with your insurance broker, be sure to address the issue of depleting limits of liability to ensure you are properly protected

W. Brian Ahern, RPLU, is President /CEO of Ahern Insurance Brokerage, one of the largest independently owned insurance brokerage firms specializing in the insurance needs of law firms. Ahern Insurance Brokerage is the Endorsed Insurance Broker for the SDCBA.