RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

Tail Coverage for Changes in Your Practice

Attorneys who are thinking about retirement, the dissolution of a law practice, or a change in career should be aware that any activity connected to the last cases you handle may follow you into the next phase of your life—including professional liability claims. As you take steps to leave the practice of law, consider extending your current professional liability insurance through the Extended Reporting Period option.

Commonly known as tail coverage, an ERP policy is widely available to legal professionals who retire or cease practicing law and provides protection for claims that are made against an insured after a professional liability policy has expired.

An insured's existing policy usually outlines a variety of options for extended coverage. The cost of the ERP is based upon the expiring premium and the length of time you wish to extend your coverage—the longer the period, the more the premium costs.

A number of policies provide an "automatic" ERP, which allows an insured to report claims following the expiration or termination of the policy for no additional premium. Automatic ERPs generally are offered for either 30- or 60-day periods. However, this type of ERP offers very limited coverage. Automatic ERPs are not recommended as a long-term solution to potential liability.

During the period when the automatic ERP is in effect, you will need to make a prompt purchasing decision, because selecting another ERP option must be done before the automatic ERP period expires. The grace period of an automatic ERP only covers you for the time that you were covered under the policy. During the automatic ERP period, you have the option of extending the period further—beyond the 30 or 60 days—to cover you and your firm for events that occurred during the time when the policy was in force. Also note that many polices do not offer coverage during the election period for acts that took place after your policy expired.

If you intend to retire within five years, plan ahead. Some insurers will provide "free unlimited" terms for ERPs. To be eligible, you must meet their age requirement and be consecutively insured by the carrier for a minimum of four years.

The ERP option is also important for your soon-to-be-former partners and employees. Generally, if you are leaving a firm that is continuing its professional liability insurance, you will still have coverage for professional services performed on behalf of that firm. If your former firm dissolves without tail coverage or fails to maintain a current policy, you will not be covered for a subsequent claim.

If you are leaving an established practice to start your own firm, an option known as "individual prior acts" coverage may be available. If you choose this option, your insurer would issue an endorsement that contains a specific retroactive/prior acts date that would coincide with the start date for your new firm.

Many loose ends must be tied up before you retire or make a major career change, and your insurance broker is a great source for help with ERP policies and other insurance and risk management issues. A savvy broker will help reduce your costs, minimize paperwork, and help pave your way to a happy retirement.

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