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Advice and Insight into the Practice of Law[®]

Using Your LPL Policy as a Risk Control Tool

The main benefit of a lawyers professional liability (“LPL”) policy is financial protection: in the event that an insured law firm receives a professional liability claim that falls within the policy’s coverage terms, the policy will provide a defense and indemnify the firm for covered losses. Many lawyers fail to realize, however, that their LPL policy offers far more than just monetary assistance in the event of a claim. A careful reading of CNA’s standard admitted LPL policy* and knowledge of CNA’s risk control offerings reveal myriad benefits and resources, as further explained below, that may minimize claims exposure and aid law firms in establishing better risk control protocols.

Reporting Potential Claims May Benefit Your Law Firm

Most insured lawyers know that they must provide notice of a claim to their insurance carrier in a timely manner. A “claim” is any demand for money or services arising out of an act or omission in the rendering of or failure to render legal services. It can involve a formal lawsuit or threat to file a lawsuit, but it does not have to. Spending a reasonable amount of time to ascertain the facts and decide whether to report a claim is understandable, but any attempt to resolve a claim before notifying the carrier may void coverage. Failing to timely report a claim to the carrier may also void coverage.

A “potential” claim is when the insured becomes aware of any act or omission that may reasonably be expected to be the basis of a claim. Circumstances that might constitute a potential claim may include but are not limited to: a client blaming an attorney for an unsatisfactory result; an attorney becoming aware that she violated an ethics rule in her representation of a client; or an attorney committing a serious error, even without any indication that the client is considering a lawsuit.

One situation in which a typical LPL policy absolutely requires insureds to report potential claims is when asked to do so in the initial and annual renewal applications for the LPL policy. The firm has a duty to disclose potential claims that it is aware of or risk waiving coverage, so it is imperative that the person responsible for completing these renewal applications is aware of all potential claims.

Outside of the renewal application, there may be advantages to reporting a potential claim before your next renewal application. Early reporting of a potential claim allows policyholders to speak to our knowledgeable and experienced claim representatives. While CNA claim representatives cannot offer legal advice, they can help you assess your potential claim and provide guidance on possible next steps, which may run the gamut from taking proactive steps in the underlying matter to rectify any errors to notifying a client of a material error and moving to withdraw from the representation.

Another advantage of the early reporting of a potential claim is the possibility of pre-claims assistance. If you report a potential claim early, and it appears there may be a way to minimize or avoid an actual claim from developing, the CNA claims department has the option to assign defense counsel to assist you in resolving the potential claim. Such assistance might include help in drafting revised pleadings or engaging in settlement negotiations with a former client or third party.

* This policy benefits discussed in this article are taken from CNA policy form (G118011A (06-2015)). Please note that this form is not used in all states, so please check your individual policy for the specific language about these policy benefits.

Additionally, if the potential claim develops into an actual claim, you will be deemed to have provided notice to the carrier when you provided written notice of the potential claim. This materially reduces the risk of any coverage issues related to failing to provide notice in a timely manner. Moreover, early reporting of a potential claim may not only help minimize the overall damages and costs of the claim itself but may also reduce your out-of-pocket costs related to the claim.

Help with Disciplinary Matters

Another coverage benefit that may be available in your LPL policy is supplemental assistance in responding to a disciplinary complaint. If you receive a letter from a lawyer disciplinary body advising that you are the subject of an ethics complaint, please provide written notice of such a complaint along with a copy of the letter to the CNA Claims department in a timely manner. Such proceedings can be damaging in their own right, but sometimes they foreshadow a subsequent legal malpractice claim. This is because some plaintiff attorneys in legal malpractice matters direct clients to file an ethical grievance against their former attorney prior to filing a legal malpractice complaint. Typically, attorneys have a duty to respond completely to disciplinary authorities and cannot object on relevance or other grounds. Thus, this technique may permit a plaintiff's attorney to obtain "free discovery" by obtaining the respondent attorney's responses to the ethical grievance prior to filing a legal malpractice lawsuit. Prudent attorneys should be cautious and seek representation even for seemingly benign ethical grievances.

Experienced disciplinary defense counsel who know the substantive laws and procedures in your jurisdiction can sometimes make the difference between no charges being filed and a formal complaint issued by the regulatory authority. The old adage that a lawyer who represents himself has a fool for a client applies to disciplinary matters. A lawyer may be highly proficient in her chosen practice areas, but such skill and experience do not necessarily translate into effective advocacy in the disciplinary arena. While certain skills, such as the ability to litigate, may apply in some disciplinary matters, all practitioners who become the subject of a grievance can benefit from the proficiency of an outside practitioner knowledgeable in disciplinary cases to objectively assess facts and circumstances and provide a defense.

If an attorney is the subject of a disciplinary proceeding, CNA's LPL policy may reimburse the Named Insured for up to \$50,000 for attorneys' fees and other reasonable costs. These fees and costs are not subject to your deductible and in addition to the limits of liability. Similar to a claim, insureds must provide timely notice of any disciplinary complaint to their insurance carrier in order to realize the aforementioned benefits.

The amount payable for this disciplinary proceedings benefit shall not exceed \$100,000 despite the number of such proceedings. In the event of "no liability" against the subject insured in the disciplinary proceeding, CNA may reimburse the insured defense costs, including those in excess of the \$50,000 cap set forth above, up to \$100,000. In no event shall the amount payable hereunder exceed \$100,000 despite the number of law firm insureds subject to a disciplinary proceeding or the number of such proceedings. See CNA's article: [How to Handle an Ethics Grievance](#).

Assistance in Complying with Subpoenas and Testimony

Responding to a request for your client file is not always simple or straightforward. You may possess documents in the file that are privileged and should not be produced. There also may be evidentiary issues to consider in identifying and maintaining privileged documents. Similarly, a request for your sworn testimony can pose risks.

If you receive a subpoena for your client file or to testify in a deposition or before a tribunal related to your rendering of legal services, please notify our claims department in writing, in the same manner that you would provide notice of a claim. You must provide a copy of the subpoena with your written notice. At our claims department's discretion, we may provide you with an attorney experienced in handling legal malpractice claims to provide advice regarding the production of documents, to prepare for sworn testimony, and to provide representation at a deposition or before a tribunal. Outside counsel experienced in professional liability matters can represent you at a deposition, make objections for the record, attempt to narrow and limit the scope of your testimony, and help prevent you from making any unintended admissions. CNA pays the legal fees for approved subpoena activities. They are not subject to your deductible and are in addition to the limits of liability.

Crisis Event Coverage

If your law firm suffers a crisis event as defined in the LPL policy, which includes but is not limited to the death, departure, or debilitating illness of a principal insured that the law firm reasonably believes will have a material adverse effect on the law firm's reputation, CNA will reimburse the law firm up to \$20,000 for a qualifying incident, if first occurring and reported in writing to CNA during the policy period.

Regulatory Inquiry Coverage

If your law firm faces an actual or alleged violation of a “**privacy breach notice law** or any law referenced under the definition of **privacy injury and identity theft** that occurred in the rendering of legal services” and is reported to CNA per the terms of the policy, CNA will pay certain defined attorney fees and costs incurred in responding to the investigation. The maximum that CNA will pay for such costs is \$20,000, regardless of the number of investigations or the number of insureds who are subject to such investigations.

Potential Savings for Engaging in Mediation

Early mediation is encouraged because it is a productive method to reduce both the time and defense costs associated with resolving a claim. Your policy may provide that if the claim is mediated and successfully resolved within a certain amount of time after the institution of arbitration or service of a lawsuit, your deductible will be reduced by 50%, up to \$25,000 total.

Better with a Letter

As a leader in the lawyers’ professional liability insurance marketplace, we stress the importance of engagement letters in our articles, guides and risk control courses. The benefits of engagement letter usage flow to both the law firm and client. From the client’s perspective, memorializing the terms and conditions of the attorney-client relationship not only helps establish good communications but can also serve as a reference guide and avoid any misunderstandings between the law firm and client from the beginning of the representation. For lawyers and law firms, documentation of the terms and conditions of the relationship constitutes a critical risk control practice that may deter or minimize any claim exposure.

In order to aid law firms in using engagement letters, we have created CNA’s [Lawyers’ Toolkit 5.0](#), a 99-page compendium of sample letters and language that lawyers may choose to use in their own law practices. The Toolkit contains more than a dozen sample engagement agreements, many of which are area-of-practice specific. In addition to the sample engagement agreement letters, the Toolkit offers sample engagement agreement clauses, sample declination and termination letters, sample conflict waivers, and a host of other materials that lawyers may use and adapt in their own letters and documents.

As an example of CNAs’ commitment to good law practice management, CNA offers an incentive to law firms to use engagement letters. If an insured utilizes an engagement agreement in connection with providing legal services that are later the subject of a covered claim, the insured’s deductible obligation with respect to that claim will be reduced by 50%, up to \$25,000, provided that the engagement agreement, at a minimum, had the following information:

- a specific description of the legal services to be provided by the insured;
- the identity of all clients for whom the insured agreed to perform such legal services;
- the fee arrangement
- a description of the insured’s file retention and destruction policy; and
- a countersignature by all clients identified in the engagement agreement.

CNA Risk Control Presentations Earn Premium Credit

Our CNA risk control department offers risk control courses to our insureds via an on-demand platform and live quarterly webinars. Your law firm may qualify for up to a 7.5% premium credit depending on the ratio of insured attorneys who take the training. As an example, a qualifying sole practitioner who attends one of our risk control courses would earn the full 7.5% maximum upon renewal of her CNA LPL policy. In a two-attorney law firm where only one of the attorneys attends the CNA risk control course, the firm would receive a 3.75% premium credit upon renewal of its CNA LPL policy. This recognizes that insured law firms are better risks when their lawyers receive risk control training. Please check with your broker on how to gain access to our on-demand risk control course and live quarterly webinars. Your broker can also inform you if your law firm qualifies for a premium discount; if so, take advantage of this CNA LPL policy perk.

Monthly Risk Control Articles

CNA publishes risk control articles on a monthly basis which offer lawyers insight and guidance on important lawyer professional liability and legal ethics topics. The publication is free of charge and sent via email. You may sign up to receive our monthly risk control article by visiting our [subscription center](#) and filling out the requested information, which takes only a couple of minutes to complete.

Risk Control Hotline

CNA also offers a risk control hotline that our insureds can utilize to discuss lawyer professional liability and legal ethics issues. While we do not provide legal advice on the risk control hotline, we do offer informational guidance on how attorneys may want to approach issues and, when relevant, may send CNA risk control articles, guides, or other resources to insureds. The telephone number for the LPL risk control hotline is (866) 262-0034 and is an added benefit to your CNA LPL policy. Insureds leave a voicemail message on the hotline after listening to our outgoing message, and a member of the LPL risk control team will return the message within one business day, if not sooner. The risk control hotline may not be used to report a claim or potential claim.

Allied Vendor Program

CNA has identified third-party vendors that may help strengthen risk control protocols for law firms. CNA's LPL Allied Vendor program highlights companies that provide trial support, cybersecurity protection, docketing and calendaring services, client intake and conflict of interest systems, among other services. Many of the companies in our LPL Allied Vendor Program offer their services at preferred rates to CNA LPL policyholders.

Conclusion

When you become a CNA LPL policyholder, you are gaining much more than just financial protection in the event of a claim. Your LPL policy may, in certain circumstances, offer assistance such as providing legal counsel to help you comply with subpoenas, assigning defense counsel to represent you at a disciplinary hearing, as well as minimizing your claim exposure by utilizing our lawyer risk control products and services. Please take advantage of these resources when the need arises and call our risk control hotline at (866) 262-0034 if you need guidance on a professional liability or legal ethics issue.

This article was authored for the benefit of CNA by:

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Sean Ginty is the Risk Control Director for CNA's Lawyers Professional Liability Program. He collaborates with other CNA Risk Control lawyers on the design and content of lawyers' professional liability risk control services, products and publications. Sean lectures frequently at CNA-sponsored events and at state and local bar associations and national seminars hosted by industry-leading organizations. He also writes articles focusing on law firm risk control and professional responsibility issues. Prior to joining CNA, he served as Chief of Staff and General Counsel for an Illinois state agency and practiced law with a Chicago-based law firm, as well as serving as conflicts counsel for an international law firm. He is admitted to practice in Illinois and United States District Court, Northern District of Illinois.

About CNA Professional Counsel

This publication offers advice and insights to help lawyers identify risk exposures associated with their practice. Written exclusively by the members of CNA's Lawyers Professional Liability Risk Control team, it offers details, tips and recommendations on important topics from client misconduct to wire transfer fraud.

For more information, please call us at 866-262-0540 or email us at lawyersrisk@cna.com

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