

Conquering the quest for malpractice insurance



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LEGAL CENTS

"Oh how I need Someone to watch over me."

When he penned those words, lyricist Ira Gershwin got it right.

As competent, experienced, dedicated and smart as you undoubtedly are, you cannot go it alone when it comes to professional malpractice. You need insurance.

I recently read an article by Tom Watson at Wisconsin Lawyers Mutual Insurance Company (WILMIC), in which he wrote that the areas of practice that generate the most attorney malpractice claims are: plaintiffs' personal injury; real estate; business organiza-

tions; estate, trust and probate; bankruptcy and collections; and family law.

Those are a lot of practice areas. They're the practice areas that tend to predominate among solo and small firms, which account for the majority of the lawyers in Wisconsin. If you add in lawyers who occasionally accept court-appointed cases — well, that's just about everybody.

While you might not enjoy writing out the check for the premiums, or any other overhead expense for that matter, maybe it helps to know there are ways to save money on malpractice insurance.

For starters, Rod Den Boer, president of Den Boer & Associates LLC in Waukesha, says to go to the Web page of the ABA's Standing Committee on Lawyers' Professional Liability, at www.abanet.org/legalservices/lpl/home.html, to educate yourself about the product you're about to purchase. There's a wealth of info there, and probably none of it's taught in law school — at least I didn't learn it, but maybe that lesson was given on a Friday.

The very basics are that professional liability insurance is "claims made," meaning the insurer covers you for any claims made during a specific time frame, even if the alleged malpractice occurred before you had a policy. Typically, a policy is written for one year.

Premiums are relatively inexpensive for new lawyers, but increase as their knowledge and experience does. As a new lawyer, that struck me as kind of unfair. After a few years, just when I finally started to think that maybe I knew something about family law, my chosen area, that's when the premiums go up?! But, it was explained to me that, in those few years, I'd gained more clients, plus the complexity of the matters had increased (as, coincidentally, had my ability to pay higher premiums).

The ABA's Web site lists insurance carriers, state-by-state. For Wisconsin, there are 29 insurers listed, plus WILMIC, which is

sponsored by the State Bar of Wisconsin, and endorsed by the State Bar's Insurance for Members Committee.

Den Boer recommends shopping around, adding that currently, it's an insured's market. You can save money by purchasing directly from an insurer. I would imagine that contacting all 30 of those insurance companies for quotes would only be feasible if you have staff. Another option is to use brokers like himself, who have access to a number of different insurance products, from across the nation.

One firm that relies on the latter method is Pasternak & Zirgibel S.C. in Brookfield, a plaintiffs' personal-injury firm. They've found there's a huge variation in the policies available to them, with regard to terms and pricing. So, to them, it's worth their time to use brokers, a commission notwithstanding, to help them find what they want, says Jeff Zirgibel, a partner with the firm. Because the market is very competitive, interestingly, he's found that different brokers may come up with different quotes for the same insurance policy from the same insurance carrier.

From year to year, Pasternak & Zirgibel tend to use different carriers. But one clause must be present for them to sign on the dotted line, he emphasizes: They must have the option to choose their own attorney, should a claim ever arise. (It hasn't yet.)

Den Boer says that, after decades in the field, he's seen a lot of lawyers go by price alone. Not wise, he says, considering that policies with three exclusions in coverage may cost the same as policies with 23 exclusions. Moreover, does the insurer provide risk-management advice, hotlines or other services? And, speaking of service, if a claim is made, do you want to be dealing with that particular insurer?

On that note, Den Boer says WILMIC enjoys a huge loyalty factor, in light of its reputation for service. The trade off, for some at least, may be higher premiums, although the company does give dividends to policyholders. WILMIC caters to solo and small firms.

According to Den Boer, another way to save money on your professional liability insurance is to seek a deductible that's higher than what's customarily written for similarly-situated attorneys. Some firms do that, but also create a line item in their annual budgets to fund the deductible. Those firms might have to produce a copy of that budget, and/or proof that it actually has that sum, or, the insurance company might want financial disclosure statements from the lawyers.

Finally, Den Boer says insurers typically inquire on their applications about an attorney's/firm's office procedures for conflicts avoidance, calendaring, compliance with statutes of limitation, etc. It's also essential for solos to have designated back-up attorneys. The better those procedures and back-up persons are, coupled with a claims-free record, the better your chances are for obtaining a quality, low-cost policy.

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