



CHOOSING YOUR MALPRACTICE PROVIDER

RISK MANAGEMENT PRACTICE GUIDE
OF LAWYERS MUTUAL

LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

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DISCLAIMER: This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

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INTRODUCTION

Legal malpractice insurance is coverage for most professional liability claims made against lawyers. Liability policies are “claims-made” policies, meaning a policy must be in effect when a claim is filed for coverage to exist. The occurrence date must also be within the time frame of the policy to be covered, and each policy will include a retroactive date listing when coverage begins. Maintaining proper coverage will provide you with peace of mind and will be reassuring to your clients.

Selecting the right carrier for your firm is vital for your firm’s operation. Important provisions can vary greatly between different carriers.

There are many factors to consider, other than price, when determining your malpractice coverage provider. Consider everything a policy includes before determining which would be a better deal. Is the deductible per claim and/or aggregate? How does the policy treat defense costs? Insurance carriers also can provide benefits beyond the policy itself. Do these come at an additional price?

Firms must fully review all factors in choosing a malpractice insurance provider before deciding on this vital piece of protection for their practice. Making the effort to investigate all pertinent details is as important as investigating a client’s case.

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MUTUAL OR BAR-RELATED COMPANIES

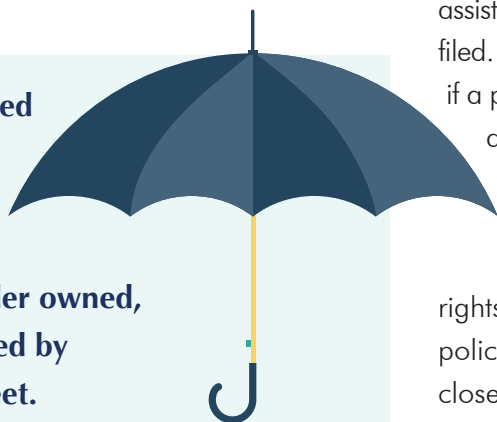
THE BEGINNING

In the 1970s, malpractice lawsuits exploded during an era of under-priced policies. Commercial carriers exited markets or raised their premiums between 100-300% and limited coverage. Bar associations across the country searched for a resolution as their members struggled to find appropriate coverage.

To create stable coverage at a reasonable price, many bar associations formed mutual companies to protect their members. A mutual company is owned by its policyholders, rewarding them with dividends during successful years. These captive malpractice insurance providers only offer legal malpractice insurance and other services for attorneys. Policyholders left high and dry by insurers exiting the market remain loyal to the mutual or bar-related companies in the ebb and flow of the insurance market, not willing to risk their practice with another unstable carrier.

The governance of these mutual and bar-related companies provides extra resources for their insureds. Officers attend meetings of The National Association of Bar-Related Insurance Companies (NABRICO), an organization in which the various state companies work together to share practices so that all attorneys receive the best services possible. All resulting products and services are for the benefit of the legal community.

Mutual or bar-related companies remain stable year after year. Because they are policyholder owned, they are less affected by events on Wall Street.



MARKET CONDITIONS

Mutual or bar-related companies remain stable year after year. Because they are policyholder owned, they are less affected by events on Wall Street. Premiums are provided at a reasonable rate instead of the year to year price swing that can occur with traded companies. Premiums are also based on the risk factors for their marketplace. These companies maintain enough capital to see them through tough times so that they will be available for their policyholders without interrupted service.

When premiums increase, they do so as a last resort to maintain sound business practices for sustainable operations. Often increases are directly related to claims experience. Since the goal of the company is to remain financially stable and not to generate a large profit, it is likely that premiums will decrease or dividends issued when conditions are favorable. Any year producing large profits would result in dividends being paid to insureds, potentially being profitable for them as well.

CLAIMS

Claims attorneys are located and licensed in the state in which the company is located, and they understand the local issues involved in the claim and can offer assistance that may repair damage before a lawsuit is filed. These claims attorneys are available for consultation if a policyholder needs assistance with a potentially dangerous situation before a claim occurs.

Bar-related companies often provide insureds with claims defense (under a reservation of rights) even when coverage of a claim under the policy is questionable. A claims attorney works closely with an insured during a claim and keeps the insured informed throughout the process. The

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claims department also works closely with defense counsel on the case. Most bar-related companies have agreements with their local defense counsel for reduced-rate representation for defense of their clients.

UNDERWRITING PHILOSOPHY

Mutual or bar-related companies directly write insurance policies instead of using agents. This reduces costs and provides the highest quality of direct service to insureds. They use sound principles and maintain reasonable rates to ensure financial stability and longevity because they understand that their policyholders depend upon them.

Bar-related providers tend to be thorough during the application process. Do not be surprised to receive requests for clarification or additional information during the review process to ensure they have the most accurate understanding about your practice. Because of the thoroughness, processing applications is a time consuming process. For mutual or bar-related companies, questions and concerns will be most likely addressed directly by an underwriter and not by a sales agent. These underwriting policies help ensure that the company has a realistic understanding of the risks they are insuring.

BENEFITS

In addition to providing stable coverage, mutual or bar-related companies strive to provide their insureds with a multitude of services to make their practices

easier. These services often come at little to no additional cost to policyholders. Such benefits include:

- **CLE programs.** Every attorney must obtain CLE each year to continue practicing law. Most malpractice providers will offer programs, but mutual or bar-related providers have the unique capability of bringing programs to your town instead of simply presenting programs in large cities that may not be convenient to you and often at reduced rates or free.
- **In-house Presentations.** Not only will mutual or bar-related companies bring presentations to your town, most will come to your office and present programs for attorneys and staff as well. These programs allow all members of a firm to get vital loss prevention information.
- **Risk Management materials.** Most companies provide materials on their websites for download. Since bar-related providers often only do business in one state, all of their materials are specifically tailored to meet the needs of those local insureds.
- **Office Audit program.** Mutual or bar-related companies are committed to improving their policyholders' practice, including thorough reviews of their office systems. This program offers suggestions to improve office management and provide better loss prevention skills to staff.
- **Claims Avoidance\Claims Repair.** The relationship between a mutual or bar-related company and its insureds creates a unique opportunity for attorneys to speak with claims counsel before a problem becomes a claim. Claims attorneys are also attune to local legal issues and can inform insureds of hot topics as soon as



Bar-related providers tend to be thorough during the application process. Do not be surprised to receive requests for clarification or additional information during the review process to ensure they have the most accurate understanding about your practice.

they become dangerous.

- **Personal Assistance.** Another unique characteristic is the ability to speak directly to an officer of the company when special assistance is required. You may even be able to schedule an appointment to discuss your issues. Keep in mind, however, these companies are small and availability may be limited accordingly.

- **Local Legal Community.** Mutual or bar-related providers are a part of the legal community they serve. Board members, officers, and claims attorneys are members of bar associations and other local legal groups. These companies also often provide financial assistance in addition to speakers, articles, and other support for these and other groups.

- **Inter-Departmental Communication.** The close relationship between the underwriting and claims departments allows them to communicate with each other regarding a firm's history of claims. This means that not just the costs incurred, but the cooperation of the firm and the merits of the claim will be factors in determining if a claim affects premium.

For more information, see the ABA website on the Standing Committee on Lawyers' Professional Liability/ (www.americanbar.org/groups/lawyers_professional_liability.html)



BENEFITS OF MUTUAL COMPANIES

1. **Stable Coverage**
2. **Range of Services at little or no cost such as**
 - **CLE Programs**
 - **In-house Presentations**
 - **Risk Management Materials**
 - **Office Audit Program**
 - **Claims Avoidance/Claims Repair**
 - **Personal Customer Service**
 - **Local Legal Community**
 - **Inter-Departmental Communication**
 - **Toll free Risk Management Hotline**

UNDERSTANDING COVERAGE

THE APPLICATION PROCESS

Understanding the application process is an important step in selecting the right malpractice provider for your firm. Think of the application like any document you file with the court: it is of vital importance to be thorough and truthful. Withholding information can actually void a policy as most applications are considered part of the policy. Do not leave anything blank; provide more information rather than less.

Several questions included in the application will have spaces for additional explanation for "high-risk" activities. Fully explain any participation in these activities, detailing measures taken to reduce the risk to the insurance carrier. If any issues were raised in last year's application, be sure that these are specifically addressed. Do not leave the underwriter feeling that questions were ignored by your firm.

A similar approach should be taken with providing claims history on an application. Do not simply provide the accusations made, explain any extenuating circumstances and list all remedies taken. Also inform the underwriter of improvements made to office management so that a problem will not be repeated.

FACTORS INFLUENCING PREMIUM

1. **Limits of Liability**
2. **Deductible**
3. **Firm Size**
4. **Claims History**
5. **Area of Practice**
6. **Office Management Systems**
7. **Location**



Keep in mind the application is the underwriter's assessment of your firm. A renewal application held for 90 days and returned just before the policy expires may be a red flag to underwriters as missed deadlines is a leading cause of claims. Be timely to show that the application is important; allow time for questions should any arise.

While thoroughness and timeliness will improve your likelihood of being insured, keep in mind that several factors influence the premium rate you are charged. These factors include:

- **Limits of Liability.** The higher the limits, the more expensive they are. However, being underinsured is not a good business practice.
- **Deductible.** Increasing your out-of-pocket expenses reduces the premium. Do not select a deductible you are unable to pay as this can be problematic for your coverage.
- **Firm Size.** Larger firms pay a reduced rate per attorney. The risk associated with emergency situations is reduced by the number of attorneys.
- **Claims History.** The claims history of the entire firm is used to determine the rate. One attorney with multiple claims can drastically increase the rate for his partners.
- **Area of Practice.** Certain areas of practice are subject to more, or larger, claims than others. These

areas of practice typically incur a surcharge on the premium.

- **Office Management Systems.** Calendar control and conflicts-of-interest systems are essential elements to any law practice. Describe your systems in detail to your underwriter. Proper calendar control and conflicts-of-interest checking are key elements in avoiding malpractice and influence your premium rate.
- **Location.** Your geographical location can also affect your premium. Some areas have higher rates of claims than others.

POLICY BASICS

After you have completed an application, you will need to understand the policy's contents to be in compliance and ensure coverage for all claims. Be sure to assess the proper limits and deductible amount before you settle on a policy, then read all the paperwork so that you are aware of what is included and excluded from your policy.

When choosing your liability limits, consider:

- **Value of Work.** Coverage should include a consideration for the value of the work you perform for clients.
- **Value of a Claim.** If something went wrong, how much could you be held liable for?
- **Value of Firm.** Be sure to protect your firm so that any damages would cover the net worth of you and your firm.

You should have a per claim limit and an aggregate limit associated with the policy. Be sure that the limits are adequate to cover your needs in each category.

Deductibles are also divided into per claim and aggregate categories, and a policy could include one

category or both. However, selecting a deductible is primarily a choice of how much out-of-pocket expense you are willing to assume. A higher deductible will lower your premium but may be problematic if you are unable to pay should a claim arise. Nonpayment of deductible is basis for nonrenewal of a policy and can lead to problems obtaining insurance from other carriers.

Your written policy will include conditions and exclusions. Conditions, such as timely reporting and cooperation, relate to the proper execution of the policy. Exclusions list actions that are not covered by the policy, such as criminal acts. Read your policy carefully to understand the conditions and exclusions applicable to your policy.

Most policies will also include endorsements. Endorsements can modify an existing policy by changing coverage or adding an attorney to existing policy. Endorsements can also list specific exclusions not addressed in the insuring agreement. Be sure to thoroughly familiarize yourself with your policy's endorsements so that you are aware of any special conditions to your policy.

PRIOR ACTS COVERAGE

Prior acts coverage is essentially a retroactive date exception policy that extends a policy's coverage backwards for a specific period of time to cover previous work. Coverage is often an endorsement to an existing inforce policy for additional premium and includes acts up to the effective date of the endorsement.

Obtaining prior acts coverage is important for an

attorney who has transitioned employment, such as lateral hires or leaving a firm to practice solo. Even though the former firm may still have coverage, the departing attorney may not be individually covered. Practicing without prior acts coverage can leave a gap in coverage and leave you exposed to an uninsured claim. Even if you think the risk of a claim is low, the defense costs for one claim could be expensive. If joining a new firm, consider the cost of prior acts coverage or tail coverage while negotiating your compensations.

TAIL COVERAGE

Tail coverage, formally known as an extended reporting endorsement, may be available for purchase by an attorney leaving a firm or retiring. This endorsement can be an alternative for an attorney having difficulty purchasing prior acts coverage. This endorsement extends the reporting period for a specified period of time. There are two types of tail coverages, limited and unlimited. Limited tail coverages aim to cover an attorney until the expiration of the statute of repose. An unlimited tail coverage provides indefinite protection, extending to the attorney's estate in the event of death.

The incident giving rise to a claim against a tail coverage must have occurred during the underlying inforce policy period. A tail coverage is not a substitute for an inforce policy. Some insurers will allow a departing attorney to purchase a tail coverage endorsement on their former firm's policy, billing the attorney separately as an individual. Generally there is a 30 day window to purchase tail coverage after the expiration of an inforce policy.



Practicing without prior acts coverage can leave a gap in coverage and leave you exposed to an uninsured claim. Even if you think the risk of a claim is low, the defense costs for one claim could be expensive.

CONCLUSION

Use the resources available to help in the selection of your carrier. State bars or bar associations will often endorse a specific carrier for its members. This endorsement comes after examining the options available and determining this provider will offer members the best services in categories such as cost, stability, claims service, and loss prevention services. While their selection may not be the cheapest option available, the bar or bar association deems this carrier the best choice for continual reasonable service. State bars and bar associations have their members' best interests in mind, take advantage of the research they have done for your benefit.

Knowing your options when choosing your provider will assist you in finding the best possible coverage for your firm. While it may be tempting to select the cheapest coverage, it may not always be wise. Switching coverage from carrier to carrier could leave you with gaps in your coverage and expose you to uncovered claims. Read your policy and related endorsements thoroughly after committing to a provider to ensure you are familiar with all of the inclusions and exclusions applicable so no coverage issues arise.



TAKE-AWAYS

- 1. State bars and bar associations have their members' best interests in mind.**
- 2. Take advantage of the research they have done for your benefit.**
- 3. Knowing your options when choosing your provider will assist you in finding the best possible coverage for your firm.**
- 4. While it may be tempting to select the cheapest coverage, it may not always be wise.**

ABOUT LAWYERS MUTUAL

Here Today

In the late 1970's, the North Carolina Bar Association was faced with the realization that the lawyers professional liability insurance market was unstable, that premium costs would continue to rise, and that the commercial insurance market for lawyers professional liability insurance was dominated by a handful of companies having no commitment to the legal profession. In January 1977, the Chairman of the North

Carolina Bar Association's Insurance Committee and its Executive Director met with members of the North Carolina Insurance Commission to discuss the feasibility of organizing a mutual liability insurance company, the first such company for lawyers in the country.

The support of the Association's members was overwhelming. The Association's members, attending its annual meeting in Asheville, approved the formation of a lawyer-owned insurance company

on June 15, 1977. Lawyers Mutual was chartered in September of 1977. During the next three months, lawyers were asked to invest in this new venture dedicated to ensuring that North Carolina lawyers would always have a place to turn for protection. Most of the initial investors put up \$1,000 each, some using their credit cards. Company licenses were granted in March of 1978, and policies issued in May. The principal reason in making the company a mutual insurance company was to eventually place equity in the hands of the attorney-policyholders rather than in the hands of stockholders who may or may not hold policies. The Company's financial strength grew very slowly at first, but a long period of excellent underwriting results and strong investment returns allowed the Company's surplus to grow. Now Lawyers Mutual has

a strong capital base and is well prepared to serve our policyholders. Lawyers Mutual is the only carrier that has continuously provided coverage to the members of the North Carolina Bar since 1977.

Here Tomorrow

Our capital ratios remain exceptional, our surplus is strong, and our conservative philosophy of stewardship will continue, whether or not such a philosophy is currently in style. What began as a vision has now endured for over 40 years — a professional liability insurance company owned and controlled by the lawyers of North Carolina.

ADDITIONAL RESOURCES

"Getting Along With Underwriters." Published by the American Bar Association.
Available at: <http://www.abanet.org/legalservices/lpl/downloads/gettingalong.pdf>

"Insurance, Just In Case: Keep Yourself Covered." Published by ALM Properties, Inc.
Available at: <http://www.abanet.org/legalservices/lpl/downloads/insurance.pdf>

"Insurance Show And Tell." Published by the American Bar Association.
Available at: <http://www.abanet.org/legalservices/lpl/downloads/showandtell.pdf>

"The Lawyer's Desk Guide To Legal Malpractice." Published by the American Bar Association. Revised 1993.

Selecting Legal Malpractice Insurance. Published by the American Bar Association.
Available at www.abanet.org or by phone at 800.285.2221; product code 4140043.
Price is \$15.00 for members of the ABA.

"Shoring Up Malpractice Insurance." Published by the American Bar Association.
Available at: <http://www.abanet.org/legalservices/lpl/downloads/shoringup.pdf>