RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

Predecessor Firm Coverage: *Are prior acts covered under your current policy?*

Attorneys often believe they have professional liability insurance coverage for past services rendered regardless of when the alleged act occurred or where they were working at the time the services in question were provided. However, the issue of coverage for prior acts is not that crystal clear.

For an attorney to be covered under an existing firm's policy for prior acts performed at a previous firm, it must be determined who is a 'named insured' on the policy and who is insured under the policy. This is usually found in item one of an insurance declaration. Typically, a "full prior acts" policy provides coverage for any current, past or future lawyers, employees, designated counsel, of counsel attorneys and predecessor firms of the law firm that is purchasing the policy. Policies often define predecessor firms as "any individual or entity engaged in the practice of law to whose financial assets and liabilities the named insured is the majority successor in interest." It is important to review how the policy defines "predecessor" firms. If a former firm does not fall within the definition, the carrier can add an endorsement with the names of the former entities that are to be insured under the policy.

Take for example Attorney X who joined Jones & Smith Law Firm in June 2010. The firm she left did not meet the definition of a predecessor firm, and Jones & Smith failed to have an endorsement added to the policy that named her former law firm. In December 2010 a claim was filed regarding services she provided and concluded while at the other law firm, and, unfortunately, the claim was not covered under the current policy.

It is important to note that if Attorney X's former firm is still in existence, the claim should be tendered under that firm's policy.

It is also important for a firm to know if its coverage is a 'full prior acts policy' or instead includes a retroactive date. With a full prior acts policy, coverage is provided for the named insured and its predecessor, if applicable, from the starting date of the original firm.

Rather than providing full prior acts coverage, some insurance companies' issue policies include a retroactive date. A retroactive date precludes coverage for claims caused by wrongful acts that took place before a specific date, regardless if the claim is made during the policy period. The purpose of a retroactive date is to eliminate coverage for possible wrongful acts known or unknown to an insured prior to the policy inception. Few insurance companies grant full prior acts coverage with no retroactive date to a first-time buyer of professional liability insurance, such as a sole practitioner who, after a number of years without coverage, decides to purchase a policy. Usually the retroactive date is established from the start date of the original firm or from the first date that uninterrupted or continuous claims made coverage has been provided.

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