

Managing risk: Who pays for crime?



One of the questions we often get asked at LAWPRO is why certain areas of claims don't get the full \$1 million per claim amount of coverage.

For example, think of how the LAWPRO policy treats counterfeit certified cheques causing an overdraft, cybercrime, and intentional misbehaviour within the real estate registration system – these coverages all have a \$250,000 or \$500,000 sub-limit. On occasion, lawyers will ask us to give higher coverage limits for these crime-related risks, presumably because they think that will take the risk off their shoulders. That, of course, puts the risk on us. And, while we think of ourselves as having broad shoulders when it comes to coping with the risks facing the legal profession in Ontario, no insurance

company has sufficient resources to be a complete answer to crime.

It is the same for other insurers. Think about areas where insurance companies sell coverage in the market that helps to protect businesses from crime. Two examples that come to mind are cyber liability policies and fidelity bonds. You can probably guess what a cyber liability policy insures you for; fidelity bonds insure a company for risks like employee dishonesty, forgery, counterfeit money, and/or extortion.

For a business that is buying such insurance, a large part of the value comes from what it learns when filling out the application form to request coverage. The questions on the application highlight areas of risk and assist

the insurer in underwriting (assessing) the dangers that could lead to the business making a claim. I can speak to this from personal experience in having to deal with arranging insurance for LAWPRO, having had a few “oh, my” moments over the years when I realized what the insurance underwriter expected the common operational practices to be for a company like LAWPRO. Almost every year we have to change some internal process to continue our eligibility for an existing type of coverage, or to be able to buy a new coverage.

If the above description is typical of the insurance industry approach to such coverages, why is that the case? Because otherwise the criminals will bleed us all dry. Unless insureds work hard to stop the

Limited coverage for crime

The LAWPRO policy is designed to cover the liability of insureds as a result of an error, omission or negligent act. However, over the years, endorsements with smaller limits have been added to the policy to draw attention to the risk of certain crimes and provide some limited coverage. Any payments under these coverages count towards (i.e., reduce) the \$2 million per year aggregate coverage.*

Innocent party coverage Endorsement No. 5

The LAWPRO primary policy covers losses due to dishonest, fraudulent, criminal or malicious acts or omissions of other Lawyers or Paralegal partners or shareholders with whom you practice up to \$250,000 per claim and in the aggregate. The cost of this is a \$250 levy surcharge per calendar year.

Real Estate Coverage Option (REPCO) coverage Endorsement No. 6

This coverage option provides insurance protection against registration of fraudulent instruments under the *Land Titles Act*. This required coverage for those practising Real Estate Law has a premium of \$100 for up to \$250,000 per claim and \$1 million in the aggregate.

Limited trust account overdraft coverage Endorsement No. 7

The LAWPRO primary policy covers liability for a trust account overdraft resulting from the handling of a counterfeit certified cheque or bank draft resulting from an error, omission or negligent act up to \$500,000 per claim and in the aggregate.

Cybercrime coverage Endorsement No. 14

Because law practices have access to confidential client information and often maintain substantial balances in trust accounts, lawyers and law firms are appealing targets to cyber criminals. LAWPRO's policy covers \$250,000 for losses related to cybercrime defined as incursion, intrusion, penetration, impairment, use or attack of a computer system by electronic means by a third party.

Each of these coverages highlight crime risks that have the potential to create large losses. Law firms need to do what they can to minimize their risks and determine if additional insurance is necessary.

* These are general descriptions of the insurance and services available to qualified insureds through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

LAWPRO resources available at lawpro.ca to help avoid losses due to crime:



LAWPRO Magazine – December 2013
Cybercrime and law firms: The risk and dangers are real



Fraud fact sheet – tips on how to protect yourself and your firm

© 2016 Lawyers' Professional Indemnity Company. This article originally appeared in LAWPRO Magazine

"Serving Indigenous Clients" (Vol. 15 no. 1). It is available at www.lawpro.ca/magazinearchives

The practicePRO and TitlePLUS programs are provided by LAWPRO

crooks in their tracks, insurance claims will go up to the point where no one can sell the relevant coverage at a reasonable price and the insurance type will disappear. Then everyone suffers, both the good risk operations and the bad risk ones.

Now think about this in the context of the LAWPRO mandatory professional liability program. While we undertake certain types of risk rating, there is minimal customized underwriting that goes into our primary program. It would not be feasible for us to replicate the sort of specialized underwriting that commercial insurance companies use for crime-related risks, given our aim of

providing a universal professional liability program with broad-based appeal at as reasonable a cost as possible.

And why should we do that when there are coverages available in the market for those who see themselves as being at risk? A key part of the Law Society's mandate is to protect the public interest, and the mandatory program contributes to Law Society fulfilment of that mandate. Therefore, the main focus of the mandatory program must be on (indirectly) protecting the lawyer's client for negligence by the lawyer, not protecting the lawyer for every type of risk that a business could encounter.

LAWPRO has taken a middle ground. We provide some coverage (that is, a sub-limit smaller than the normal \$1 million per claim limit) for certain crime-related risks. While providing some comfort for the lawyer, the smaller amount also helps draw the lawyer's attention to how significant the risk is and (hopefully) to the resources we provide to help lawyers stop the criminals in their tracks. It is a balancing act, in fact one that has a good societal purpose. ■

Kathleen A. Waters is President & CEO at LAWPRO.

Business insurance for law firms

Professional liability insurance is just one component of comprehensive insurance protection for your firm. If you haven't already, you should assess your exposures and speak with an insurance professional to see what policies are available that might give you peace of mind. If the variety of policies seem intimidating, ask your broker whether there's a 'business' package that would satisfy your insurance needs. It's also useful to ask about add-ons (such as business interruption/loss of earnings, valuable papers and records coverage, and mail & transit coverage) that can expand a policy to meet more than one type of exposure. The following descriptions are not meant to be exhaustive.

Property

Typically covers: physical assets such as buildings, contents, equipment and inventory, and possibly valuable papers and records, business interruption and mail & transit.

If the firm owns its own building, has insurance obligations under a lease, or has personal property (such as office equipment), property insurance is essential and is intended to respond when losses arise from fire, vandalism, theft, etc. Valuable papers and records coverage typically covers the cost of re-creating valuable papers and records following a covered loss.

Commercial General Liability

Typically covers: claims for bodily injury, property damage, personal injury and sometimes advertising injury to third parties arising from a firm's premises and operations.

If a member of the firm causes bodily injury, property damage, personal injury or advertising injury to a third party, this is the policy law firms will want to have in place to respond. The personal injury coverage can possibly provide coverage for claims alleging, for example, defamation, violation of privacy, false arrest and malicious prosecution.

Crime (Fidelity)

Typically covers: money and securities-related losses arising from crimes, mail & transit coverage, counterfeit currency, extortion and more.

Originally, this would have only covered dishonest acts of the firm's employees, but may now include coverage for computer systems fraud, and acts by outside parties.

Excess E&O

Typically covers: claims for compensatory damages arising from an error or omission on the part of a member of a firm that exceeds the limits of liability available through an underlying policy.

Lawyers will sleep better at night knowing that if the defence and indemnity costs for a claim exceed the limits under the mandatory insurance, they are covered. Excess insurance options are available from LAWPRO.

Employment Practices Liability

Typically covers: defence for employment litigation or "wrongful employment practice."

While you would expect this to cover things like actions for wrongful termination, harassment, breach of contract, or invasion of privacy, this can also cover claims from non-employees contrary to equality rights.

Network Security/Cyber Liability

Typically covers: at this point, there's nothing "typical" about this area of insurance in terms of what coverage or sub-limits may apply. Types of losses that may be covered include privacy breaches, theft or unauthorized access of sensitive information, extortion/ransom coverage, and business interruption.

Depending on the policy, these policies may cover first party (the firm and its lawyers) and third party (e.g. clients) damages and claim expenses arising out of data being accessed, used, stolen, or held for ransom, or service being denied or malicious code transmitted to the insured's computer system. This form of insurance is particularly relevant to law firms which are expected to store sensitive information and hold funds in trust.

Equipment Breakdown Coverage

Typically covers: mechanical and electrical equipment, computers and commercial equipment, air conditioning and refrigeration systems, and boilers and pressure vessels, and possibly lost business income resulting from such breakdown.

The coverages available under this type of policy, also known as a policy of boiler and machinery insurance, are very often excluded under policies of property insurance.

© 2016 Lawyers' Professional Indemnity Company. This article originally appeared in LAWPRO Magazine

"Serving Indigenous Clients" (Vol. 15 no. 1). It is available at www.lawpro.ca/magazinearchives

The practicePRO and TitlePLUS programs are provided by LAWPRO Magazine