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Ensuring Good Insurance Coverage In Tumultuous Times


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By William Brennan

The insurance market is undergoing turmoil as a result of recent trends, including terrorism, corporate scandals and skyrocketing healthcare costs. Premiums are soaring, causing firms to either cut back on coverage or to cut into their profits — choices that could have a profoundly adverse impact on the firm's future success.

Below are some tips to help law firm management address this difficult situation. These tips apply to all three of the broad categories of law firm insurance products — professional liability, property/casualty, and health insurance — but because of recent events, especially to professional liability insurance.

1. **Select the right broker.** Rather than screening multiple insurance carriers directly, many firms find it advantageous to retain an independent agent or broker who has access to a variety of carriers and can suggest the right one(s) for each firm's unique situation. Independent agents also are more likely to be experienced in obtaining unusual coverages such as kidnap and ransom insurance.

   First and foremost, use an experienced, qualified insurance broker who knows the legal profession. Choose wisely because the broker has a critically important impact on your law firm's ability to achieve its risk management objectives.

   Unless your current broker's competence and qualifications are excellent, seek competitive bids for this extremely important responsibility. Don't rely on someone whose primary qualification is being a personal friend or neighbor of a partner! Insist upon references from comparably sized law firms to ensure the broker knows the legal marketplace and its unique requirements.

   One reason your broker needs current expertise with law firms is to ensure that all operating risks have been identified and adequately covered with an insurance product (or otherwise protected against via appropriate risk management strategies). The market has changed dramatically, and insurance coverage limits from even a few years ago may not be adequate today. Some policies, notably for healthcare insurance, may need to be restructured to respond to current market conditions. Also, new coverages such as catastrophic information loss may need to be added. All these changes need to be accurately budgeted.

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2. **Identify risks.** Whether you are renewing with your current carrier or inviting new carriers to bid, prepare a comprehensive risk analysis to identify all significant risks of loss. This is an important step that in the past may have been overlooked without significant consequences. In today's dynamic insurance marketplace it is essential to conduct a thorough risk assessment.

3. **Reduce exposure.** A comprehensive risk management strategy should do more than just shift all risk to insurance carriers by purchasing insurance products; it should strive to minimize risk wherever practical. Even after identifying the risks for which you must insure, you should set about reducing those risks.

For example, with regard to malpractice insurance, begin by reviewing your practice management procedures. Conduct a thorough audit of your internal quality control procedures. Assess the adequacy of your client acceptance policies and procedures to screen out potentially high-risk clients. Strengthen docketing and calendaring systems to avoid missing deadlines. You may want to have a consultant perform an analysis of your business processes in each of these areas to identify potential weaknesses. Develop standardized policies surrounding high-risk areas of law.

"A comprehensive risk management strategy should do more than just shift all risk to insurance carriers ..."

4. **Consider consolidating.** Having identified high-quality insurance companies, consider consolidating coverages with fewer carriers. Consolidating should eliminate problems with overlapping coverage or, worse, gaps in coverage. It should also make you more attractive to prospective carriers, entitle you to multi-line premium discounts, and improve your negotiating leverage.

5. **Decide whether to invite competitive bids.** If you already have an excellent insurance company and

competitive premiums, the best strategy today is to build on that relationship. This is not the time to seek the cheapest insurance premiums from a new company. Competitively bidding your insurance coverage too often may scare away the best companies, which look for long-term business relationships. Instead, stick with your current high-quality carrier(s) and focus your attention on improving other operating areas of your firm.

On the other hand, do seek competitive bids if your existing carrier's financial strength is cause for concern, or if you have reason to believe your premiums may be seriously inflated.

6. **Develop detailed insurance specifications and shop wisely.** If you do open your renewal to competitive bids, insist that your broker provide an apples-to-apples comparison of coverage and premiums. This is another area where your broker's experience is required. Comparing bids with different coverage provisions, definitions, exclusions and deductibles is extremely time-consuming and can be perplexing. It is best to avoid this situation entirely by clearly defining your requirements in the request for bid. Be specific in outlining key terms of each insurance product.

7. **Select only high-quality carriers.** Establish as one of your top selection criteria the quality of the carrier(s) selected. You get what you pay for, and getting a "good deal" in this market may be the wrong deal, especially for liability insurance.

   Prepare (or preferably, have your broker prepare) a well-researched assessment of the quality of each carrier. While service and other factors contribute importantly to carrier quality, the core factor is financial strength: you want to be certain your carrier will be there in the unfortunate event of a substantial loss.

   Four rating services offer information about a carrier's financial strength: A.M. Best, Moody's, Fitch and Standard & Poor's. Even for the largest insurance companies, be sure to check multiple ratings; this is necessary because of current market instability and turmoil.

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8. **Focus on underwriting.** Whether you stay with your current carrier or open the process to competitors, focus extra attention on the underwriting process. The presentations you make to underwriters are now more important than ever before. Underwriters need to perform more due diligence, look at historical profits, check your firm's web site, and research other available sources of information. Make their job easier:

   - Submit policy renewal applications to underwriters at least 90 days in advance of the expiration date. Just as September 11 has changed the amount of time it takes to travel from an airport these days, it now takes more time to complete the process of underwriting new insurance policies.

   - Provide details generously, especially regarding any claims. Expect to answer probing questions about prior claims and any identified unasserted claims. By demonstrating that you are proactively managing your practice and responding to identified problem areas, you will distinguish your firm from those that are less attentive, and you will get the very best terms and pricing.

9. **Reduce premiums.** Increase deductibles where reasonable. Self-insure acceptable risks. Be sure to negotiate for lower premiums whenever you demonstrably reduce exposure.

A final suggestion: effective insurance management, like risk control, requires ongoing vigilance. You would promptly investigate a newly discovered fire hazard even if your casualty policy's renewal date were months away. If there's worrisome business news in today's paper about one of your insurance carriers, investigate that promptly as well.

The insurance marketplace is going to be a rough ride for at least the next year. Despite this situation, being knowledgeable, proactive and using all available resources will go a long way in managing the rate hike crisis. ◆

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