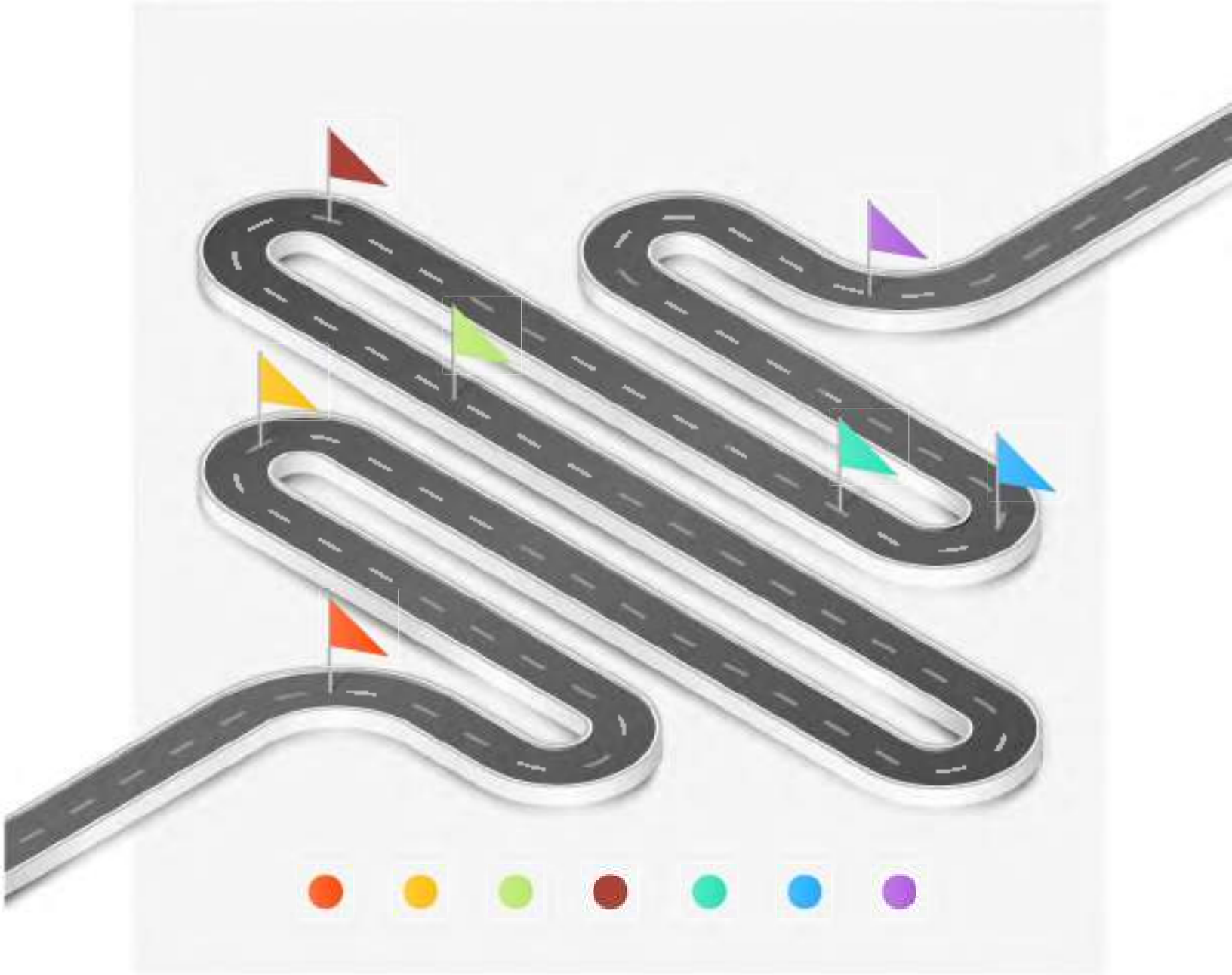


THE **ALPS** GUIDE TO PURCHASING LAWYERS' PROFESSIONAL LIABILITY INSURANCE



GETTING STARTED

Here's the Truth

The term "expensive" is relative. Legal malpractice insurance premiums are not as expensive as defense costs and subsequent loss payments can be in malpractice claims. Common excuses and misunderstandings include:

- Premium payments are beyond affordable.
- Coverage isn't necessary. I can just declare bankruptcy to avoid paying an adverse judgment.
- I can protect my assets in ways other than through insurance.
- All a malpractice policy does is invite unwanted claims.
- Premium savings from going bare will more than offset any possible loss.

Approximately **4-5% of lawyers** practicing in the U.S. will face an allegation of malpractice in any given year.



Claims can easily take **6 to 24 months** to resolve.



Defense costs on a claim can often break the **\$100,000** mark before you know it.

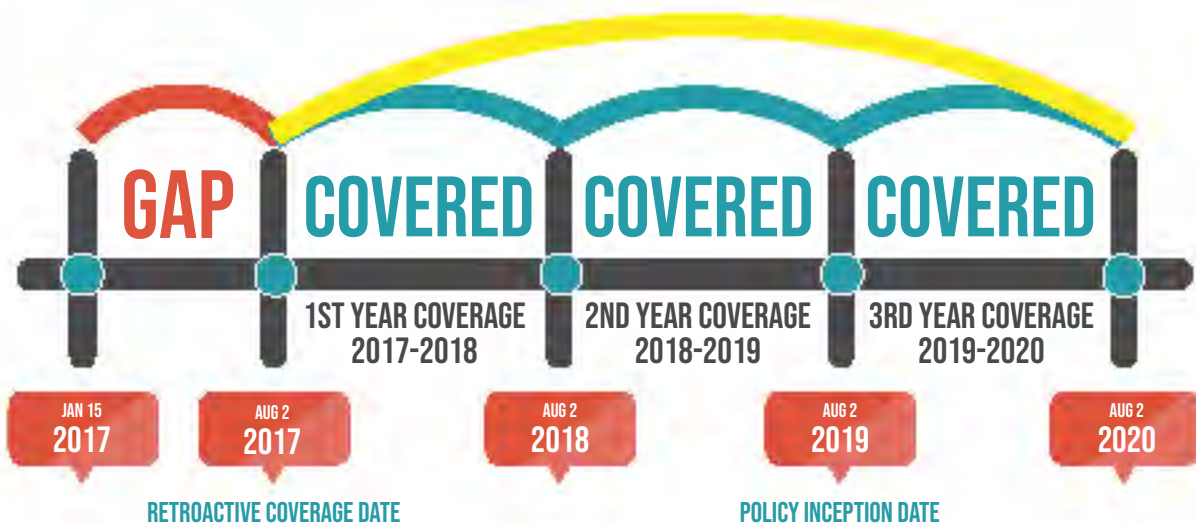


1) Purchasing Coverage Is the Right Thing to Do

Missteps can and do occur on client matters for all kinds of reasons. If and when they do, impacted clients can be significantly harmed. The purchase of an appropriate level of malpractice coverage is the best way you can protect your clients and your firm should a serious misstep ever occur.

2) What is a Claims-Made and Reported Policy?

Legal malpractice policies are claims-made and reported policies. This means that coverage is provided for claims first made and first reported to the insurance company while a policy is in force and as long as the act, error, or omission upon which the claim is based occurred after the policy's retroactive coverage date. A policy's retroactive coverage date is usually the policy inception date of the first policy you purchase, which means you will need to purchase continuous coverage year after year in order to maintain coverage for any wrongful acts that might have occurred in prior years.



3) When to Purchase

Purchase coverage as soon as you begin to practice. Generally it isn't possible to buy retroactive coverage for work done prior to the inception date of your first policy. Work done after your first policy starts will be covered and work done prior to the inception date of that first policy will not be.

4) Know What Your Dollars Will Buy

▪ *Policy Limits.* Policy limits are expressed in a per claim/aggregate manner. If policy limits are expressed as \$500,000/\$1,000,000 this means you would have a \$500,000 limit for each individual claim during the policy term up to a total of \$1,000,000 for all claims reported during the policy term. While some companies may offer minimal limits along the lines of \$100,000/\$100,000, and yes minimal coverage is better than no coverage, be aware that defense costs on claims can easily exceed \$100,000 so something above this minimal amount would be a better choice.

While there is no standardized formulaic way to determine the amount of coverage you might need, here is one way you can get a rough idea. This approach is about trying to help you find a way to feel comfortable with whatever limits you select actually providing an acceptable amount of protection in light of the type of work you perform and the amount of damage that could be imposed should you ever make an error on one or two matters in any given policy period. Start by identifying three significant matters that represent the kind of work you commonly take on and then estimate the size of the loss if a serious misstep were to occur on all three matters. Set your aggregate limit at 80% of that total.

1. Identify your 3 largest clients.



2. Estimate the amount of damages resulting from an error, act or omission to each of these clients.

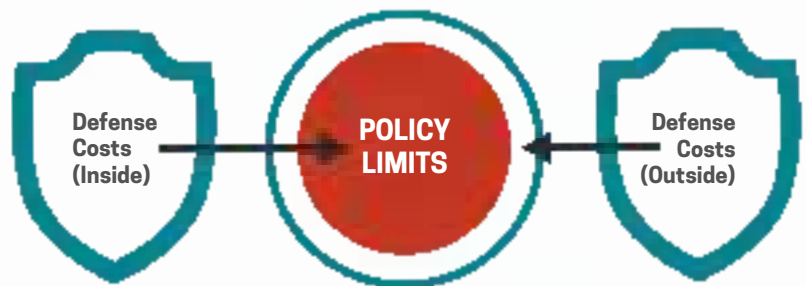


3. Take the sum total of the estimated amounts and calculate 80% of that total to determine your limits.



*From a leading Professional Liability Association dedicated to education in insurance. Not to be relied upon to establish limits required for your risk, and not to be considered advice or consultation related to the appropriate amount of limits you should carry. This data is only to be used as a general benchmark. You must use this and other factors to make your own determination of appropriate limits.

▪ *Defense Costs.* Ask if defense costs are inside or outside policy limits. Significant price differences between two quotes with the same limits can be a signal that the policy with the lower quote has defense costs placed inside the limits of liability, meaning that every dollar spent on defense reduces what will be available to pay any settlement or judgment by one dollar. The better alternative is a policy that provides for a claims expense allowance where defense costs are placed outside of policy limits. Costs will be paid by the insurer before your policy limits start to decline.



▪ *Deductible.* Look for policies that provide for "first dollar defense," otherwise known as loss only deductibles. The obligation to pay the deductible will only arise if and when a settlement is reached or an adverse judgment is entered. Given that a majority of claims with defense costs still resolve without a loss payout, this can be an attractive benefit.

5) Policy Features Worth Asking About

Q: Will the policy provide any coverage if you sit on a corporate board?

A: In the for-profit arena, the answer to this question is usually no. However, limited coverage may be extended to attorneys sitting on nonprofit boards.

Q: Is coverage available for disciplinary proceedings?

A: This coverage is usually set forth as a supplementary payment provision for disciplinary matters. Available coverage amounts typically range between \$5,000 and \$50,000. Under most policy terms, the deductible requirement will not apply and the amount paid for defense costs will not erode the limit of liability. ALPS provides this supplemental benefit with differing amounts of available coverage in all of its policies.

Q: Is there innocent-insured coverage?

A: Almost all legal malpractice policies exclude coverage for dishonest, fraudulent, criminal acts and the like; but policies with innocent insured coverage contain language that preserves coverage for all the other lawyers in a firm who did not participate in such conduct, didn't know about the conduct and didn't acquiesce to the conduct once learning of it.

Policy Pointer: Most policies exclude dishonest, fraudulent, malicious, and criminal acts; obligations that arise under contract (e.g. agreeing to an indemnity provision in a legal services contract); and the giving of investment advice just for starters. If you have any coverage concerns, ask for clarification.

Q: Under what circumstances is tail coverage provided?

A: The word tail, is shorthand for extended reporting period endorsement. The purchase of this optional endorsement provides an attorney the right to report claims to the insurer after a policy has expired or been cancelled. ALPS provides some of the most comprehensive tail coverage options. These include a free individual tail in the event of total and permanent disability, a call to active military service, or upon death. ALPS also offers free tail coverage to retiring lawyers who are 55 years old and have continuously been insured with ALPS for the five preceding years. This benefit can result in significant savings, especially if retirement happens to be on the horizon.

Q: Is there a hammer clause?

A: Common policy language typically requires that an insurer seek an insured's approval prior to settling a claim for a specific amount. If the insured does not approve the recommended figure, however, a policy with a hammer clause will state that the insurer will not be liable for any additional monies required to settle the claim or for the defense costs that accrue from the point after the settlement recommendation is made. Such clauses tend to force an insured to accept the carrier's recommendation. Look for policies that have no hammer clause thereby allowing meaningful participation in settlement decisions. The ALPS Premier and Preferred policies contain a pure consent to settle provision so you need not look any further.

Purchase Tip: When comparing policies don't forget to compare the companies offering them. Is the insurance carrier financially stable? Has the carrier ever pulled out from one or more markets? Are all claims staff licensed attorneys? Does the carrier offer loss prevention services? Are you able to speak with the decision makers? Does the carrier give back to the legal community in some fashion? The answers to these kinds of questions can tell you a great deal about the company that will be responsible for defending you once a policy is purchased.



6) Send the Right Message with Your Application

The way a firm treats the application process can tell an insurer more than you think. When a firm has had its renewal application for 90 days but ends up not returning it until just before the reapplication deadline, an insurer can become concerned about how a firm approaches critical deadlines. When an insurer calls to obtain additional information from a firm and the phone call is not promptly returned, they can become concerned about a firm's communication practices with their clients.

Remember, your application represents your firm. Sloppy, late or incomplete applications reflect poorly on your firm and can speak to the overall risk exposure of a firm. Know that the actions or inactions of lawyers during the underwriting process will leave an impression and impressions count with insurance carriers, just as they do with clients.

Many malpractice insurance carriers respond negatively to firms that routinely sue for fees due to the increased risk of a malpractice counterclaim. If your firm regularly files fee suits, consider redesigning your billing and collection practices and tell the carrier how the new procedures will minimize the need to sue for fees in future. If you only occasionally sue for fees, detail the decision-making process so that the underwriter knows how the decision tree works.

Application Tip: Some carriers provide short form indication sheets that can be completed in a few minutes. These forms allow you to quickly obtain a non-binding estimate which can be useful information should you decide to do a little comparison shopping.

Application Tip: Never withhold specifically requested information when filling out the application regardless of how damaging it may appear to be. Like any contract, being thorough and honest is essential.

7) Protecting Your Clients

As lawyers, we are here to protect the interests of our clients. However, lawyers and those in their employ can and will make a mistake from time to time. None of us are perfect. In fact, even good lawyers who do great work can still get sued. It happens. We've handled such claims here at ALPS. However, the question is this. Should a significant misstep ever occur on one of your client matters, what might the fallout be? Think about the answer as a member of our learned and honorable profession. Clearly if and when a significant misstep occurs, the client will be harmed in some fashion.

Now put yourself in the client's shoes and ask yourself who should be held responsible, particularly if a financial loss is part of the equation? You know darn well what the answer is. After all, if a lawyer representing you on a personal injury matter blew a statute that resulted in a lost opportunity for any kind of recovery, you would expect to be made whole and you know it. You see, insuring for malpractice isn't about protecting yourself. It's about protecting your clients should something go wrong and that's the way it's supposed to be.

