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LAWYERS PROFESSIONAL LIABILITY

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We live in an ever changing world, what would be considered unusual a few years ago today is an accepted fact. This is true in almost every person's daily life. You, the lawyer, never dreamt say twenty years ago that you could be taken to court and action brought against you for an error arising out of your professional services to others as a lawyer.

Good Heavens, no! It just wasn't done. Today the public are so suit conscious that the lawyer must protect himself with insurance against the possibility of making a mistake which would cause one of his clients to bring action against him.

These acts, errors and omissions, can be very costly to the lawyer. You are professional men and in that capacity the public expects you to perform to the utmost of your ability. Sometimes this is not enough and the client hires another lawyer to bring action against you for the error or omission. No one person is infallible, we are all human, mistakes occur, but a lawyer can sleep at night if he buys a professional liability policy.

It was after World War II that the insurance market for lawyers' errors and omissions, insurance first began to grow. Lloyds of London, it is believed, was the first market to design this type of policy. In American the New Amsterdam Casualty Company was a pioneer, quickly followed by the St. Paul Fire and Marine Company. It was not until 1954 that my own company entered the business. Today the most active markets are Continental Casualty Company and St. Paul Fire and Marine. These two companies write by far the greatest share of the lawyers professional liability business. Most of it is written through State Bar Associations sponsored programs. By obtaining the support of State Bar Associations, the coverage can be widely distributed and many more lawyers buy the policy thus giving the company a greater spread of business.

From an insurance salesman's standpoint, I believe an attorney is probably the most difficult person to sell insurance to today. He is either too busy to talk about coverage or he will go through your policy with a magnifying glass looking for ambiguous wording. I make the remark in jest, for I believe it is very important that people do review their insurance policies for the questions from your assist us in the insurance business to modernize and streamline policies to meet the changing conditions of today.

It is fairly safe to say that most lawyers professional liability policies written today are basically the same. This I know is a very broad statement, one which I am sure if I was in court I would have to qualify. I mean most policies cover for all sums which the lawyer shall become

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obligated to pay by reason of the liability imposed upon him by law for damages resulting from any claim made against him arising out of his professional services for others in his capacity as a lawyer and caused by any act, error or omission. Most policies cover the lawyer for acts performed by others where he is legally liable in his capacity as a lawyer. This, of course, refers to employees in his office.

The standard exclusions are as follows:

- a. To any dishonest, fraudulent, criminal or malicious act or omission of the insured, any partner or employee;
- b. to the conduct of any business enterprise owned by the insured or in which the insured is a partner, or which is controlled, operated or managed by the insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith;
- c. to bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof.

Most new policies provide a separate limit of liability for each named insured and the partnership. Up until last year practically all policies had an aggregate limit of three times the policy limit, some still have this condition but they are gradually changing to meet competition.

The policy protects the insured for acts, errors or omissions which occur during the policy period. It also covers, prior to the effective date of the policy, provided claim or suit is brought during the policy period and provided the insured had no knowledge of such prior act, error or omission. One policy has a fifteen year discovery clause, another has an unlimited discovery period. This means that if an act occurred during a policy period it might take years for it to be discovered. Under the first policy mentioned, claim must be made within fifteen years while the other policy claim could be made at any time.

The conditions in most policies are very similar. One of the most important conditions is that no claim will be settled by the insurance company without consent of the insured. As a lawyer, it is very important for you to protect your professional reputation in any community, sometimes if the insurance company settled a claim without your consent, it could conceivably damage his excellent reputation. We in the insurance industry respect you, our insured lawyers, and by the use of this clause allow you to discuss claims with us that might damage your practice and your professional standing with your clients.

The premiums charged for this coverage are very reasonable. Most insureds buy three year policies, in doing this they are able to save some money. Three year policy premium is either 2½ times the annual premium payable in advance, or 2.7 times the annual premium payable in install-

ments of 40% the first year and 30% the second and third years.

Probably the most common claim under a lawyers professional liability policy is the situation where the insured forgets the Statute of Limitations.

The lawyer today is a very important citizen. You find him in all sorts and sizes of communities. His functions are many, his knowledge in legal matters is greatly needed by all of us at some stage in our lives. It is only right that a lawyer should be able to protect himself for any act, error or omission as he so ably protects others when they are in need of legal advice.

I realize this speech is rather short, but I am willing to answer questions. Please understand I am not an attorney and it is possible that some questions may be so technical that I could not answer them, but I can refer them to my associates in the company and obtain an answer.