

INSURANCE

Know Your Policy — and Know Your Limitations

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A recurring line in one of Clint Eastwood's Dirty Harry movies was: "A man's just got to know his limitations." So it is with professional liability insurance, which always contains limitations on what is covered. In fact, the policy specifies them as the policy's "Limits." The limits mainly define the maximum amount that the policy will pay for a covered claim. Therefore, if your policy limit is \$1 million, that is the most that the policy will pay to the party claiming injury.

Often, though, this limit can also apply to something else: your legal fees. The cost of the attorneys representing you can easily exceed the amount you end up paying the claimant. Virtually all policies cover legal fees as well as the cost of court awards and settlements. But some policies limit the amount of legal fees that will be paid. For example, a \$1 million policy limit may apply to both indemnity payments (for the judgment or settlement itself) *and* expenses (attorney fees, court costs, photocopy expenses, etc.).

If you have this type of policy and, for example, you have a verdict against you for \$500,000 and the expenses are \$500,000, your \$1 million policy limit is just adequate enough to cover all costs. However, if the verdict is \$1 million at the same level of expenses, you are on the hook for the additional \$500,000 over the policy limit.

That is why you should have a policy that covers expenses without limitation, sometimes called "costs in excess" or "defense costs outside of limits." The Declarations page of your policy is the first place to look for this feature. If expenses are part of the policy limit, that fact should be noted right next to that limit. If it is not noted, don't stop there. Also check the Insuring Agreements section of the policy. This should be at the very begin-

ning of all the verbiage that comes after the Declarations. (There may be a page or pages, called Endorsements, between the Declarations and the Insuring Agreement. Take a look at those, too, as they may modify the limits or otherwise affect your coverage.) The Insuring Agreement should specifically state that the costs of defense are covered, but look for "within" or "as part of the limits of liability" as an indicator that your policy is limited. Conversely, look for "in addition to" or "in excess" to confirm that it is not so limited.

If still in doubt, scan the policy wording to see if there is a specific section titled "Limits," "Policy Limits," or "Limits of Liability." This may appear as a part of the Insuring Agreement, Conditions, or even as a stand-alone section in the policy. It should clearly indicate that expenses, defense costs, or claims costs are covered *in addition to* the limit of liability.

Let's say that you have now determined that your policy covers defense costs in addition to your policy limits. Now, can you fight any malpractice case against you to the hilt without worry about the costs? That depends. If the insurance company decides to fight the case on your behalf to the bitter end, through the verdict and any subsequent appeals, then, yes, the legal fees are covered, even if they go through the roof. But if the insurer wants to settle the case and you want to fight it out, you may have to incur the additional legal fees and the amount of any judgment in excess of the amount of the settlement the insurer previously negotiated. This is detailed in the Consent to Settle provision of the policy, which should be in the Conditions section.

Finally, what happens if the court awards the claimant \$2 million and you have a \$1 million policy limit? You are responsible for the \$1 million in excess of the

insurance available to you, even if the victorious claimant has to order the liquidation of your personal assets. Since most people don't have a spare \$1 million sitting around in a bank account, plaintiff attorneys have come up with another technique whereby they sue *your* insurance company on your behalf alleging "bad faith" in not settling within the policy limits when the insurer had the opportunity to do so. However, if you specifically rejected that settlement offer in the Consent to Settle process, you negated this bad-faith claim against the insurer. This takes it back to your assets as the sole recourse for the claimant.

As a practical matter, the vast majority of claims settle before going to trial. The time and expense of a trial can be avoided, as both the plaintiff and defense attorneys have a pretty good idea of what a case is worth if it goes to verdict. On the other hand, the relatively few cases that go all the way continuously set those perceived settlement values.

It may seem too much bother for you to probe your policy's limits. You might think that you'll likely never be sued and that, if you are, your coverage will not fall short.

Remember that Dirty Harry had another famous line: "Do you feel lucky? Well, *do* you?"

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