



Managing Risk

As if last month's column on Bar finances was not enough, we are entering a soft market for professional liability insurance. I attended a conference sponsored by the ABA in early September and heard the speakers say that 2009 and 2010 will be "difficult" years.

"Difficult." What does that mean?

There are about 20 companies that issue malpractice policies in Arizona. The prediction is that the number of companies will decrease, and the cost will increase. Lawyers with unfavorable histories and lawyers in certain high-risk practice areas may face even greater hurdles in obtaining insurance.

Although professional liability insurance is not required in Arizona, as of last December, you must report annually whether you are insured (there are exceptions to the reporting requirement). Malpractice insurance is required in some states already, and that movement is growing.

It makes sense. Professionals occasionally make mistakes, and those mistakes can be costly. Too often, mistakes made by uninsured lawyers go uncompensated. We are here to serve the public, not the other way around.

Well, you get the point. Mandatory malpractice insurance is the future, and I would like our members to have affordable insurance available.

Because the commercial market is headed into "difficult" times, we are left with two alternatives: captive or risk retention insurance; and the Oregon model.

With a captive insurer or risk retention group, we would be required to have a substantial reserve and charge premiums that reflected our claims exposure. Those without insurance or with problems getting insurance would want to sign up, but if they are the only ones in the group, would the premiums be affordable? Probably not.

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Thirty years ago Oregon faced a malpractice insurance crisis. In response, it formed its own professional liability fund. Every Oregon lawyer is insured by the Professional Liability Fund, or PLF, as they call it. The fund provides a first layer of insurance of about \$300,000. You can buy more coverage from the PLF, or you can go to the market and purchase from ALAS, CNA or the other commercial carriers.

The cost is modest. About 96 percent of claims are resolved within the limits of the first layer. No big reserve was necessary to start the fund.

Consumers like it, in part because they can file their complaint and have it processed through to resolution, often without having to hire a lawyer. Lawyers like it because they get free education and training through the PLF designed to help them lower their risk. In addition, the cost of the product is less than it is in the commercial market.

In July, the Bar's Board of Governors listened to a presentation by the Executive Director of the Oregon PLF. The Board is continuing to gather information and analyze the suitability of the Oregon model for Arizona.

As we do that, I suggest you take a look at the Oregon PLF Web site (www.osbar.org/plf/plf.html) and let me know what you think. 

