

Thinking about retiring – cutting back? Advance planning is critical.

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With the graying of America, and more and more attorneys getting up in years, the question of retirement, sale of the practice, and, unfortunately, death, creeps more and more into our conversations. That, of course, leads to the question of “tail” coverage.

The purpose of this article is to define “tail” coverage and the factors pertaining to this type of lawyers’ malpractice insurance. These are the most commonly asked questions:

1. What is “tail” coverage?

The proper term is Extended Reporting Period Endorsement (“ERP”).

“Tail” or ERP coverage refers to the period of time after the end of the policy term during which claims involving wrongful acts committed prior to the end of the policy term may be reported, and for which indemnification and cost of defense is provided, in accordance with all other policy terms. The practical definition is that coverage is extended to

retiring attorneys, attorneys who stop practicing law, sell their practice, or whatever, and his or her ability to report a claim which occurred during a policy period after one stops practicing.

2. Is “tail” coverage provided automatically?

Yes and No (sounds like a lawyer’s answer). Some carriers have a provision in their policy that will allow up to 30 to 60 days of an automatic ERP at the expiration date of their policy. (This is also known as the free mini-tail.) It functions just like the regular ERP but coverage expires either after 30 or 60 days, whichever is stated in the policy.

For example, ISBA/Mutual Insurance Company does not offer this option. Every policy is slightly different from each other and it is imperative for the insured to read the policy for specific language that will either enhance or limit coverage or options.

3. When is the optimum time to begin shopping for ERP coverage?

The appropriate time to purchase ERP coverage is in anticipation of retirement, ceasing to practice law, either mid-term or at the end of the existing errors and omissions policy term, in anticipation of the sale of the practice, or upon the death of the policyholder.

4. How long do I have to make my decision?

In making the decision to purchase “tail” coverage, there are typically 30 days from either the retirement date or within 30 days after the policy has expired. For the specific binding language reference should be made to the policy.

5. How do I “activate” ERP coverage?

To activate coverage one needs only to notify their carrier in writing of an intention to elect ERP coverage and to provide specifics, e.g., the date to be in effect, for example, at the expiration date of the policy. Again, please be aware that if the policyholder does not elect the coverage it will not automatically be placed onto the policy.

6. Why should retiring lawyers purchase ERP coverage?

In addition to the peace of mind of the policy holder, ERP coverage is really for the protection of the past clients, to provide an avenue for which clients can be made “whole” again if a claim arises out of an error while practicing. The coverage also provides protection for the attorney, their family and/or estate.

7. What does “tail” coverage provide in terms of protection?

Depending on the length of ERP, the coverage may be for 1 year or for an unlimited number of years. This provides the ability to report any claim that is reported for work done prior to retirement or the date that the ERP coverage began.

8. Where can I purchase this endorsement coverage?

The word endorsement actually means that this coverage can only be purchased by an “active insured”, thereby limiting the purchase options.

9. What kind of cost is one looking for in ERP coverage?

To extend coverage to report any new claims for 1 year is typically 100% of the expiring premium cost. After 1 year carriers vary from 2 – 6 years and many carriers offer an unlimited option. The cost is based on some type of percentage like 200% of the expiring premium for 6 years or 250% for an unlimited option. This schedule will be clearly spelled out in the policy under the heading of “Extended Reporting Period.” Almost every carrier has some type of enticement for longevity. One example is, a solo practitioner having been insured with ISBA Mutual for 10 years or more, can obtain an ERP – Unlimited, for 100% of their expiring premium.

Because our wonderful Illinois State Bar Association was responsible for the creation of a most successful lawyers' malpractice insurance company, the ISBA/Mutual Insurance Company, any and all questions can be directed to Kurt B. Bounds, Vice President, Business Development & Service at ISBA/MIC, 223 W. Ohio St., Chicago, IL 60654-4445, #312-379-2016, kurt.bounds@isbamic.com. Mr. Bounds graciously educated the three authors so as to be able to write this article.