



Which Policy Covers?:

The Interplay and Crossover Between
Lawyers Professional Liability Policies and
Cyber Liability Policies

PROFESSIONAL LIABILITY ATTORNEY NETWORK

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The Interplay Between LPL and Cyber Policies

- Cyber products exist that are unique to Law Firms
- Endorsement to LPL Policy vs. Standalone Cyber Policy
- Brokers and Insured Firms often Have No-Idea What is Covered
- The Common Law Firm Reluctance to Report
- Cyber Coverage unlike LPL Coverage Can Vary Greatly
- Important to Understand the Gaps and Where Potential Coverage May Exist

- Basics of the LPL Policy
 - Referred to as “Legal Malpractice Insurance”
 - Claims-Made policies
 - Claims generally brought by client and focused on “mistakes” and standard of care
- Ethics Complaint – ARDC Coverage
 - Usually limited its scope
 - Reporting breaches
- Criminal Acts Generally Not Covered

Cyber Coverage for Law Firms

- Data Breach Response Coverage – legal/ethics counsel, forensic IT, public relations, cost to notify clients etc.
- Computer/Billing System Coverage – Costs to restore system, test and protect, and possible **lost income** for downtime.
- Confidentiality, Privacy and Media Coverage – “damages and claim expenses” resulting from a “**wrongful act**” concerning client confidential information and privacy. Actual “**Wrongful Act**” Definition – “alleged act, error, omission, misstatement or breach of duty committed during course of your business including but **not limited to ...**”

Obvious LPL/CYBER OVERLAP

- Confidential/Privacy/Media Coverage Directly Speaks to LPL Issues
- Coverage Under this Coverage Part only Available if LPL Coverage is Current and LPL Carrier Denies
- If LPL Accepts – Acts as Excess
- Very Policy Specific
- Can be Confusing Especially When Policies are not a “Package”

Claim Example - Spoofing

The Insured Law Firm routinely acts as “closing agent” for real estate transactions and holds buyer funds in escrow. The Insured Firm uses a non-attorney “Closing Coordinator” to assist in closing transactions. The Closing Agent received an e-mail purporting to be from seller’s agent instructing \$170,000 purchase funds to be wired to an account purportedly controlled by the Seller. Of course, this was a fraudulent e-mail. The closing went forward and the Seller made a demand for the \$170,000 and threatened suit against the Insured Firm.

Actual and Hypothetical Claims Resulting from Spoofing Incident

- Insured Firm's Investigation into How it Happened – Forensic IT Hired to Confirm Breach was on Seller's End
- Claim from the Seller for Immediate Payment of \$170,000 – Insured Firm determined Closing Agent failed to call and confirm wire transfer orders with Seller's Agent and Bank.

Potential Coverage for Spoofing- Related Claims/Incident

- Potential coverage under the Cyber Policy for costs incurred for Forensic IT to confirm no breach of Insured Firm's computer system
- Potential coverage under LPL Policy for claim made by Seller for \$170,000.
- Possibly No Coverage Under Cyber Policy for \$170,000 claim by Seller because no breach of Insured Firm's computer system (but remember broad language of Cyber Policy)

Similar Fraudulent Wire Instruction Claim – But Insured Lawyer's E-mail Spoofed

The Insured Lawyer is a solo-practitioner that handles real estate closings. His client, the purchaser in the transaction, received an e-mail from an e-mail address that was very similar to the Insured Lawyer's e-mail instructing the client to wire funds. The client wired the funds as instructed. Again, this was a fraudulent instruction. The client came up with additional funds and the sale proceeded.

Potential Coverage For Fake E-mail Claim/Incident from Insured Attorney

- Potential coverage under Cyber Policy for Forensic IT and for IT services to protect against future breaches.
- Potential LPL coverage for claim by client for monetary damages
- Potential LPL coverage for ethics complaint
- Potential overlapping or excess coverage under the Cyber Policy for claim by client for monetary damages.
- The nature of the client's allegations will dictate which policy covers rather than factual scenario.

Outdated Computer for Solo Practitioner – Ransomware Attack

A solo-practitioner who scaled back her practice uses only her 12 year-old home computer with no IT support. The lawyer handles divorce, other domestic matters and mediations where she has both parties' confidential information. A ransomware attack "locked" client files and they could not be accessed. The hackers demanded \$3,000 to unlock files. An outside IT company was called in, all files were able to be retrieved and backed-up and the old computer was discarded. The IT consultant confirmed the hackers had no access to the client files.

Hypothetical Claims from Old Computer Ransomware Attack

- The Lawyer has a claim for costs of hiring IT Firm to retrieve client files and confirm that no confidential data can be accessed.
- Had confidential information been obtained may have costs for privacy counsel and disclosure costs
- Had confidential information been obtained by hackers a client or mediation participant may have a claim for damages against Lawyer.
- A client or mediation participant may institute an ethics complaint.

Potential Cover for Old Computer Ransomware Attack Claims

- The Cyber Policy will cover for costs of IT firm to retrieve data and confirm no ongoing breach
- The Cyber Policy may cover for costs of ethics counsel, client disclosure and even public relations costs if confidential information was taken.
- The LPL Policy may cover if client or mediation participate made claim for damages based upon stolen confidential information.
- May have crossover or excess coverage under the Cyber Policy
- LPL Policy may cover for Ethics Complaint

Immigration Firm Housing Confidential Client Employee Information

The Insured Firm represents large companies who routinely bring foreign workers (mostly tech) into the country on work visas etc. The potential employees are permitted to input personal identification for firm to use to apply for work documentation. A person inputting information informed the firm that he could see other individual's information. The Insured Firm hired IT specialists to close the "hole" and perform penetration testing.

Hypothetical Claims for Immigration Firm Unsecured Portal

- Good thing a decent guy discovered this and the Insured Firm was alerted because possible claims limited only by the imagination!
- Insured Firm has a claim for repair of the “hole” in the program and for penetration testing to make sure it is repaired and does not happen again.
- Individuals could have claims for negligence in exposure of their confidential information.
- The clients – i.e. the large companies hiring the firm to assist in obtaining work documents – may have claims
- Ethics complaint from Attorney Disciplinary Commission
- State Enforcement/Ethics Actions from Attorney General

Potential Coverage for Immigration Firm Unsecured Portal Claims

- The Insured Firm is covered under Cyber Policy to close the hole and perform penetration testing.
- The Insured Firm may have coverage under LPL Policy for claims by individuals for disclosure of confidential information and for claims by client.
- The Insured Firm may have overlapping coverage or excess coverage from Cyber Policy for these claims.
- The Insured Firm may have coverage under Cyber Policy for hiring of privacy counsel and disclosure to affected individuals.
- The Insured Firm may have coverage under LPL Policy for defense of ARDC ethics complaint.
- The Insured Firm may have coverage under LPL Policy and Cyber Policy for state, federal or Attorney General Investigations.

Takeaways for Lawyers and Insurance Professionals

- Cyber Liability coverage may overlap with coverage under LPL and other professional liability Policies.
- In these types of situations it is imperative that both carriers (and possibly criminal policy carrier) are put on notice.
- The coverage issues are not necessarily clear and an Insured Firm may receive coverage for different aspects of claim or incident from different carriers.
- The law is developing and evolving, as is policy language
- A good PLAN Firm Lawyer to navigate these issues is a must!