# Insuring All the Other Risks

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I know it's not pleasant to think about and it's easy to dismiss, but unexpected things do happen in life, even to attorneys. Consider this. Over the years some of our insureds have passed away prematurely from climbing accidents, heart attacks, and cancer. Some have had to live with the consequences of a life changing event such as a stroke. Others have had to deal with the fallout of things like employee theft, an office break-in, a car accident, vandalism, lost or stolen computers, a sexual harassment claim, the complete and permanent loss of network data, or a client fall. Firms have also reported weathering fires, floods, hurricanes, and explosions (honestly!). We live in a world full of risk. Given this reality, the interesting question is should something unexpected ever happen to you would you be able to successfully navigate those waters at least from a financial perspective? Often the answer would be contingent upon there being an adequate amount of insurance coverage in place for the type of loss sustained. Not having insurance, or not having enough insurance, can be a financial tipping point in your personal or professional life if not in both.

I hope we all can agree that no one can prevent death. It even seems to me that the ability to accurately predict when death might occur continues to be most elusive. The only real way to plan for the unpredictability of death as well as with all the other above listed risks is to try and manage the risk of their occurring by obtaining appropriate insurance coverage. Now please understand that this isn't intended to be a sales pitch. We don't even sell the insurance products that would properly address a number of these risks. The point is simply this. The failure to appropriately address these risks is in reality a risk management decision. Inaction is at its very core a default decision to self-insure and I don't believe that this is what many attorneys really intend to do. Unfortunately it is what far too many end up doing at least for certain categories of risk. I have no problem making a conscious decision to insure or not insure any given risk; just have it be a conscious decision so that when the unexpected does happen there aren't any unplanned for consequences. My intent here is to encourage you to develop an understanding of what some of the significant non malpractice risks are so that informed risk management decisions can be made. That's it. Toward this end, I have put together the following list of risks and considerations for your review.

**What would happen if you died next month?** Could the firm continue on? Would the firm have the financial wherewithal to be able to pay out your stake in the firm? Would your spouse be able to keep the house? Would the kids still be able to go to college? If you have significant wealth, would your beneficiaries have sufficient resources to pay the estate taxes? If the answer to these kinds of questions is no, consider obtaining life insurance. There are a number of options available in the market, but the important thing is to cover both the personal side and the business side of the equation. By way of example, "Key Man Life Insurance" is designed to help a firm carry-on in the event of a partner's death. You might couple this coverage with a fixed-premium Term Insurance policy in order to address your personal insurance needs.

**How long could you cover your partner's share of the office overhead were she to become disabled?** What if you suffered a debilitating injury in a car accident? If your partner became permanently disabled and wanted to sell you her share of the business, could you afford to buy her out? Illness and injury can lead to a partial or total permanent disability that could effectively end an attorney's career and, when significant disabling events do occur, financial disaster often follows if this risk wasn't properly managed. Again, some of our insured attorneys and their families and partners have dealt with the likes of cancer, back injuries, stroke, and depression and their periods of disability have run the gamut from several months to lifelong.

Disability insurance is the appropriate way to manage this risk and remember the following rule of thumb if and when you decide to move in this direction. If you pay the disability insurance premium with after-tax dollars, the benefits will normally be tax-free. If you use pre-tax dollars or if your employer pays the premium, the benefits will be taxable. In light of such tax consequences it is important to always visit with your tax professional prior to the purchase of disability insurance so that the purchase can be properly structured.

Disability policies also have elimination periods which, after becoming disabled, define the time the insured must wait before the benefits start. Elimination periods can range from 30 to 360 days. Given this, the proper way to manage this risk is to couple a disability policy with sufficient cash reserves to cover living expenses at least through the selected elimination period. Also, look for a guaranteed renewable policy in case your individual circumstances ever change such that you become a greater risk. This will prevent the insurance company from canceling the policy on that basis. Finally, you might also consider coupling your own individual disability insurance policy with a group disability insurance policy, which would be purchased by the firm, to be able to insure a larger portion of your income stream.

Turning to the business side of this risk, disability buy-out insurance is one way to fund the purchase price of a buy-out driven by a disability. In short, this type of policy would enable either the remaining partners, or the firm itself, to buy-out the disabled partner's share of the business at an agreeable price. This coverage could be coupled with a business overhead expense policy which would provide coverage for the costs of ongoing overhead expenses (to include malpractice premiums under certain policies) during a period of disability.

**What if you were at fault in a serious accident or a guest in your home was seriously injured?** Accidents happen and the resulting loss could easily exceed the liability limits of your auto or homeowners policy. Any attorney with an established civil practice could share just how common it is to find that damages far surpass the money available to make an injured party whole. Your personal assets are at significant risk in the absence of a personal liability umbrella which typically provides additional coverage over the underlying limits of both your auto and homeowners policy. While many attorneys would not consider practicing law without having a professional liability policy in place, attorneys are less diligent about obtaining a personal liability umbrella. Again, accidents happen. Don't get caught unprepared.

**What if your office burned down, an employee was at fault in an accident while running a firm errand, or a past employee sued you for wrongful termination?** Worse yet, what if a serious fire started in your rented office space and this fire caused damage to other units in the building? What if an elderly client fell and broke a hip while walking out your front door? Year after year we hear the stories. Lightning hit a building, an employee running an errand ran a red light and broadsided a car, an employee filed a hostile work environment claim, or an office was burglarized. This list could go on and on.

As an ALPS Risk Manager, I do find that most insureds have some sort of a general commercial property insurance policy in place. The problem, if there happens to be one, is that sometimes certain specific exposures were overlooked. As a brief aside, however, one serious concern that comes up every once in a while is the attorney who is renting office space without any commercial property insurance coverage at all. If this is the case for you, please review your lease. Most leases contain clauses that require the tenant to hold harmless, indemnify and, in some cases, add the landlord to the applicable policy. This means that should a fire start in your rented space and this fire destroys other parts of the building, you could have a very serious problem given that you may be held financially responsible for the total damage. Just know that general commercial property insurance packages are available to renters and should be purchased to cover the obligations that can arise under many leases.

That said, if you have a commercial property policy already in place, you might review your policy to see if any of the following coverage options are there. If not, these options are worth serious consideration. Note that several of these options may be available as an endorsement to a commercial package or sold as a separate and distinct policy.

**Business Interruption -** Also called an Extra Expense Policy, this coverage would compensate you for lost income if your firm had to move to temporary quarters due to disaster-related damage such as from a flood or fire. Business interruption insurance would not only cover the profits you would have earned had the disaster not occurred, but it would also cover operating expenses, like electricity, that continue even though your business activities may have come to a temporary halt.

**Employment Practices Liability -** This coverage would protect the firm by covering legal defense expenses and damages resulting from wrongful employment practices including discrimination, sexual harassment, wrongful termination, and other workplace related claims.

**Employee Dishonesty -** This coverage would protect the firm from financial loss due to the fraudulent activities of an employee. The loss could be the result of the employee's theft of money, securities, or other property of the employer. Look for a policy that would also cover the theft of client funds because not all policies do.

**Accounts Receivable Coverage** - This coverage would indemnify the firm for amounts that become uncollectable as a result of the destruction of accounting records. It would also cover the costs of rebuilding these records.

**Non-Owned Auto** - This coverage would protect the firm by covering injuries or damages that your employees are responsible for if they are ever at fault in an auto accident involving their own vehicle while out of the office on firm business.

This article is not intended to be an exhaustive analysis of insurance products or a primer on how to buy any specific type of insurance policy. Talk to the appropriate insurance professional. Again, the goal here is simply to create awareness and to encourage the proactive management of risk because the alternative, which is typically facing the fallout from an unexpected event uninsured, is not a position most of us would ever want to find ourselves in.

# Risk Management Questions?

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