

Employed Lawyers Professional Liability Insurance

Employed Lawyers Professional Liability (ELPL) insurance covers lawyers who are employed by companies as opposed to law firms. The coverage is designed to address the unique malpractice risks faced by in-house attorneys and their support staff in the performance of legal services for their organizations. The demands of in-house attorneys to monitor and police their organization's activities and financial condition, and to report any potential wrongdoing, continue to grow.

We have specialists focused on ELPL and can offer tailored coverage solutions for a wide range of organizations.

Coverage Highlights:

- Professional legal services rendered to the organization and subsidiaries
- Paralegals, temporary lawyers, legal assistants, law students, notaries public and independent contractor attorneys working under the supervision of employed lawyers included as Insureds
- Coverage for pro bono legal services, personal legal services, outside capacity legal services, moonlighting legal services, including notary services, included
- Moonlighting and personal legal services does not require the written consent of the organization
- Defense cost coverage sublimit for Intra-Organization Claims available

Eligible Risks including, but not limited to:

- Financial Institutions
- Publicly Traded Companies
- Manufacturing
- Construction
- Technology
- Energy
- Property Management/Real Estate
- Agriculture
- Wholesale Trade/Distributors
- Transportation
- Non-Profit Organizations
- Quasi-governmental entities (water, sewer, transportation districts)
- Healthcare

Products and Capabilities:

- Primary Policy
- Follow Form Excess Policy
- Capacity up to \$5 million limit
- Accounts of all sizes can be considered for primary and excess

Types of Exposures Employed Lawyers Face

Claims can be brought by various people and entities that interact with in-house counsel such as regulators, vendors and other third-party relationships, employees and executives within the organization or the organization itself. Claims can arise from the following services performed by in-house attorneys:

- Reviewing contracts and performing contract negotiations
- Human resource activities
- Opinion letters on the company's financials
- Giving legal advice to employees including executives
- Assisting with merger and acquisition activities and private placements
- Regulatory reviews
- Moonlighting or pro bono services

Why D&O Coverage is Not Enough

- A D&O policy only covers acts of the in-house attorney in their capacity as an officer, but not as an attorney providing legal advice to the company or its executives.
- Many D&O policies contain a Professional Services E&O exclusion.
- The Insured vs. Insured exclusion would limit claims by other employees or the organization against the in-house attorney.
- A D&O policy would not provide professional liability coverage for pro bono, personal legal, moonlighting contingent on company approval and outside capacity legal services.

Visit intactspecialty.com/management-liability for applications and underwriter contact information or contact **Kilauren McShea** at 312.821.4719 or kmcshea@intactinsurance.com for more information.

Please consider these hypothetical claim scenarios as you evaluate the insurance needs of your organization. While the scenarios may seem extreme, claims such as these are a reality. Intact Management Liability Employed Lawyers coverage can help your organization manage risk arising from a wide range of potential exposures.¹

Unauthorized Practice of Law

A paralegal working for a nonprofit human services organization directed elderly clients to self-service estate planning forms on the Internet and assisted them in interpreting and filling out the forms. The paralegal also made legal representations regarding how a particular estate planning device would affect the client's life circumstances. After an investigation, the state bar association filed a claim against the general counsel of the human services organization for failure to adequately supervise the paralegal, and against the paralegal for the unauthorized practice of law.

Malpractice – Pro Bono Representation

With the approval of his employer, an in-house transactional attorney for a financial institution defended an indigent client in a felony assault matter under the state bar association's mandatory pro bono requirement. After the client was convicted, he sued the attorney for malpractice, alleging ineffective assistance of counsel.

Negligence – Employment Law

A not-for-profit inner city hospital experienced a layoff of employees after a funding shortage forced the hospital to downsize. In-house counsel handled the disparate impact analysis of the proposed layoff and determined that the layoff would not disproportionately affect employees with regard to age, race, gender, or other protected classes under relevant employment laws. After a former employee filed a national origin discrimination claim with the EEOC, the EEOC investigated the layoffs and brought an enforcement action against the hospital in federal court. The affected employees also brought an action against the in-house counsel for negligent design of the downsizing plan.

Conflict of Interest – Dual Representation

The general counsel for a small public company represented both the company and its CFO in an investigation and subsequent action by the SEC regarding misrepresentation of financial information in the company's financials. The company fully complied with the SEC during the

investigation, and charges were ultimately dropped against the company. The CFO was found liable, was fined by the SEC, and was fired by the company. Subsequently, the CFO filed a malpractice claim against the general counsel for conflict of interest and ineffective representation of counsel.

Misrepresentation – Opinion Letter Work

A development company sought private financing in order to expand its business and issued debt instruments to 100 individual and corporate investors in order to raise revenue. In connection with these transactions, in-house counsel for the development company issued written opinion letters regarding the financial standing of the company and the viability of its new course of business. The expansion was never completed, the development company went bankrupt, and the investors filed a class action against the company and in-house counsel for breach of fiduciary duty, misrepresentation and professional malpractice.

Negligence in E-Discovery

An animal rights organization sued a manufacturer of canine chew toys, alleging that certain chemicals in the toys' plastic coating were causing severe illness in dogs when fragments of the coating were ingested by the dogs during aggressive play. During discovery, plaintiff sought information related to the development and testing of the toys, including communications between scientists and engineers and the manufacturer. In-house counsel of the manufacturer used an outside law firm to manage the discovery process and hired an e-discovery service provider to retrieve e-mail correspondence and other documents related to the chew toys from the defendant's computer systems. During trial, it became apparent that defense witnesses were poorly prepared to testify and the defendant manufacturer had failed to produce numerous communications within the scope of the discovery requests. A special magistrate investigated the discovery errors and determined that in-house counsel failed to give adequate direction to the e-discovery company and was negligent in supervising outside counsel. The trial judge sanctioned in-house counsel, who also was brought before the state bar association in a lengthy disciplinary proceeding.

Malpractice – Personal Legal Services

As a favor to his employer, in-house counsel appeared in court to assist his CEO's son in defending a traffic matter related to an automobile accident. When all the evidence against the teenager had been presented and the judge issued the harshest punishment possible for the violation—license revocation—the CEO terminated the in-house counsel's employment and joined in a malpractice claim filed by his son.

Sarbanes-Oxley Liability

General Counsel for a private, wholly owned subsidiary of a public company sought an outside legal opinion whether certain benefits transactions needed to be reported in the entity's financials. Outside counsel opined that reporting was

required, and the general counsel advised the subsidiary's CFO accordingly. Prior to the public company's financials release, the general counsel discovered that the transactions had not been included in the company's financial report, and he left a telephone message for the parent company's CFO, stating that he had an "urgent matter" to discuss. The parent company's CFO never returned the call, and the company's financials were disclosed, unchanged. A subsequent SEC investigation revealed the misstatement, and the general counsel was found liable under Section 307 of the Sarbanes-Oxley Act of 2002. The general counsel was fined and suspended from appearing or practicing before the SEC for his negligence in not following up with his employer or the company's parent to ensure that the transactions were reported correctly.

About Intact Insurance Specialty Solutions

Throughout the United States, Intact Insurance Specialty Solutions' underwriting companies offer a broad range of specialty insurance products through independent agencies, regional and national brokers, wholesalers and managing general agencies. Each business is managed by an experienced team of specialty insurance professionals focused on a specific customer group or industry segment, and providing distinct products and tailored coverages and services. Targeted solutions include group accident and health; commercial and contract surety; entertainment; environmental; excess property; financial institutions; financial services; inland marine; management liability; ocean marine; public entities; technology; and tuition refund. For further information about U.S. products and services visit: intactspecialty.com.

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Visit intactspecialty.com/management-liability for more information.

The foregoing material and claims examples are intended as a general description of certain types of insurance coverages and services. Any discussion herein is not intended to create a promise or binding statement of coverage for a specific claim or claims, as coverage for any claim depends on factors that include (but may not be limited to) the facts and circumstances of the claim, the language of the applicable policy of insurance and the applicable law. Please refer to your insurance policy or consult with your independent insurance advisor for specific information about coverages, terms and conditions.

This material is intended as a general description of certain types of insurance coverages and services. Coverages and availability vary by state; exclusions and deductibles may apply. Please refer to your insurance policy or consult with your independent insurance advisor for specific information about coverages, terms and conditions. Some coverage may be written by a surplus lines insurer through a licensed surplus lines broker. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

