

PROFESSIONAL LIABILITY INSURANCE FOR IN-HOUSE PRO BONO

While in-house pro bono has grown dramatically in recent years, obstacles, both real and perceived, still exist, including concerns about professional liability or malpractice insurance, as it is often referred to by in-house counsel. While claims related to pro bono legal services are rare, it is a concern to many in-house volunteers and their employers, which, unlike law firms, do not typically carry such insurance. The good news is that there are several options for legal departments to address the risks associated with professional liability concerns:

I. Work with a Legal Services Provider

One option is to engage in pro bono opportunities in coordination with a legal services provider that supplies insurance coverage for those who volunteer with the organization on a sponsored pro bono program. The amount and scope of coverage may differ among legal services providers. Of particular concern for in-house departments is whether coverage of legal staff volunteers is provided. Not all legal services providers supply such coverage so it is important to check before starting a project.

Benefits:	• no cost to the legal department • legal department bears no responsibility for obtaining and managing coverage
Drawbacks:	• volunteers are limited to projects sponsored by legal services provider • departments are limited to coverage provided by legal services provider

II. Obtain Coverage Directly from an Insurer

Another option a legal department may choose is to work with its company's broker to obtain insurance directly from an insurer. Many insurance companies offer what is referred to as employed lawyers professional liability (ELPL) insurance, which can cover a variety of risks, including those associated with pro bono. Some companies, such as Chubb and AIG, offer worldwide coverage, which is particularly important for legal departments with global pro bono programs.

A number of legal departments may already have ELPL insurance. It is important for in-house counsel to talk with their risk managers or other colleagues responsible for insurance. If a legal department does not already have insurance that covers liability arising from pro bono work, there are several ways in which to obtain such coverage.

Add an Endorsement to Existing Policy

Some companies purchase directors and officers liability (D&O), or errors and omissions (E&O) insurance. If so, their insurer may be willing to add an endorsement to the company's existing policy to provide coverage for little or no cost. Such coverage may likely be subject to a sublimit

of \$1 - \$5 million of coverage. It is important to verify that such an endorsement expressly includes pro bono work.

Benefits:	• legal department has flexibility with regard to the projects undertaken • could include worldwide coverage
Drawbacks:	• possible increased premium • policy limits shared with existing liabilities

Purchase a Standalone Policy

In lieu of adding an endorsement to an existing policy, a standalone ELPL insurance policy may be purchased. Many ELPL policies provide coverage not only for work performed for the insureds' employer but also for pro bono work. In addition, it is possible to purchase a pro bono specific ELPL policy. While there are no standard policies of this nature, several insurance companies have form endorsements that will modify a standard ELPL policy to cover claims resulting from pro bono work exclusively. Such policies typically provide \$1 - \$5 million of coverage. For smaller legal departments, the annual premium for a policy providing \$1 million of coverage may range from \$1,500 to \$3,000, depending on the policy limits, terms of coverage, and risk profile of the insured, which includes the size of the legal department and the specifics of its pro bono program.

Benefits:	• legal department has flexibility with regard to the projects undertaken • could include worldwide coverage • policy limits dedicated to liability associated with pro bono • does not require an underlying policy
Drawbacks:	• premium

III. Obtain Coverage from Outside Resource

[The National Legal Aid & Defender Association \(NLADA\)](#) is a non-profit member association dedicated to increasing legal services for those who cannot afford counsel. One of the products and services NLADA offers its members is the opportunity to purchase Lawyers Professional Liability Insurance through the NLADA Insurance Program. AIX Specialty Insurance Company, a company of The Hanover Insurance Group, is the underwriter for The NLADA Insurance Program. Wells Fargo Insurance Services, Inc. is the Program's broker. The Lawyers Professional Liability Policy typically offers up to \$5 million in limits. The typical annual premium for such coverage currently ranges from \$1,000 to \$2,500, depending on the policy limits, terms of coverage, and risk profile of the insured, which includes the size of the legal department and the specifics of its pro bono program. However, the premiums and limits can vary depend on the wishes of the policyholder.

As of June 2021, NLADA insures approximately a couple dozen corporate pro bono programs. As of August 2021, NLADA Corporate Advisory Committee (CAC) dues for a new member are \$5,500.

Benefits:	• legal department has flexibility with regard to the projects undertaken • coverage negotiated by NLADA • policy limits dedicated to liability associated with pro bono
Drawbacks:	• payment of premium and membership dues • coverage is subject to policy terms and conditions, and may have limitations on coverage for work performed outside of the U.S.

IV. Self-Insure

Some companies self-insure for many potential liabilities and are not inclined to purchase insurance. While a company's risk management department may be comfortable assuming the risks associated with pro bono legal services, members of the legal department who volunteer may still be concerned. In those circumstances, legal departments may consider issuing a letter or statement to volunteers expressly providing that the company will cover any risks.

Considerations

Many legal departments have selected one or some combination of the options described above. Which option listed above is right for a particular legal department depends on the needs of its pro bono program and its company's existing insurance program. We recommend in-house counsel speak with their company's risk manager. In doing so, it is important to consider how the terms of any policy will interact with the structure of the legal department's pro bono program.

For instance, some insurance policies require that pro bono work be "provided on behalf of the named insured." If a company with such an insurance policy also has a pro bono policy which states that all volunteers act on their own behalf and not in their capacity as employees of the company, the pro bono policy and insurance policy may be at odds.

In addition, many legal departments' pro bono programs engage all members, attorneys and non-attorneys, located both in the U.S. and abroad. Legal departments interested in coverage of all participants in all locations should verify the terms of the applicable insurance policy.

Providers

Insurance companies come in and out of various markets and vary as to the jurisdictions for which coverage is available. Insurers that confirmed as of summer 2021 that they provide ELPL insurance, including pro bono coverage, include:

- [American International Group \(AIG\) Corporate Counsel Premier](#)
- [Chubb Employed Lawyers Professional Liability](#)
- [CNA Lawyers Professional Liability Program](#)

- [Intact Insurance Employed Lawyers Professional Liability Insurance](#)
- [Philadelphia Insurance Companies Employed Lawyers Protection Company](#)

Other insurers may offer coverage as well; this list is not intended to be comprehensive. You may share information with CPBO at cpbo@probonoinst.org regarding additional providers.

Chubb has readily available endorsements to tailor its ELPL policies to pro bono policies if desired. Other insurers may be willing to do so as well.

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