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PROTECTING PROFIT

by Ronald M. Roth, President of NNA

Background

A mid-sized law firm in Northern Virginia, specializing in personal injury law, purchased a professional liability policy to protect the law firm, its partners, and staff attorneys from errors and omissions. The coverage had been in force for a number of years without incident. The program seemed to be operating smoothly and premiums seemed reasonable. For these reasons, the firm never looked too deeply into modifications or changes to this risk management strategy.

This all changed abruptly after their malpractice insurance carrier declared bankruptcy.

It turns out that the law firm's E&O rates were priced low for a reason. The insurance company had been improperly pricing their coverage and was financially devasted due to a number of large claims. The law firm needed to replace their coverage immediately!

Unfortunately, the law firm had a claim during the period in which the carrier was in run-off/liquidation and the partners of the firm found the carrier almost impossible to work with. They were unable to contact their insurance carrier and had discovered limitations on their coverage, of which they were unaware. This left the firm with less than adequate insurance for both defense and indemnity coverage.

Enter the National Network of Accountants

The accountants for the law firm recommended they speak with our firm (NNA) regarding the consideration of a *Captive Insurance Company* solution. Their accountants felt that given the law firm's risk profile and history (outside of the one claim) they could be a good candidate for a captive insurance company. They referred the client to our firm for a consultation.

- Our first step was to take them through an overview of how captives are operated, how they integrate with commercial insurance coverage, and how they can help make a risk management program more efficient and provide coverage they might currently be lacking. This initial discussion gave the client the information necessary to become familiar with the basic concept of captive insurance.

- Our next step was to have this prospective client speak directly to one of our clients who currently has a captive insurance company in the healthcare industry and is enjoying the benefits provided by their captive insurance company. This is generally the best way to get business owners comfortable with the process and gives them a better understanding of how powerful a business tool a captive insurance company can be.

- We then engaged in a full survey of the commercial insurance marketplace and the coverage/pricing available. We worked closely with one of our commercial insurance brokerage partners to ensure that our search was comprehensive.

- This analysis revealed that larger traditional carriers currently servicing the legal malpractice market (more financially stable and sound then their previous carrier), were unwilling to provide reasonable terms and conditions that would bridge coverage from the prior carrier. This presented a significant gap in coverage. **Our team's underwriting expertise and depth of knowledge allowed us to understand and identify the coverages, potential gaps, and exclusions in the various policy forms available in the market.**

- NNA's team was eventually able to structure an integration between a commercial policy with a large deductible and a captive insurance company which we helped form and implement. In addition to the deductible layer of their new errors and omissions policy, the captive also covers the following areas of the firm's risk:
    1. Unknown potential liability associated with the transitional time period from the prior bankrupted carrier to placement of coverage with the new carrier.
    2. We were able to raise deductibles in other areas of their commercial package and cover those in the captive as well.
    3. Provide excess cyber liability coverage above what is offered commercially.
    4. As the firm has a small number of very important corporate clients representing almost 25% of their revenue, we were able to include coverage in the captive for ***Loss of Key Customer***.

Outcome

By implementing the captive insurance program, the company has:

1. Made their E&O coverage more stable and secure.
2. Addressed a potential gap in coverage due to the insolvency of their original E&O carrier.
3. Lowered their overall insurance spending and created a more efficient risk management platform.
4. Created a *war chest* of funds available should they face a loss of key customer or require capital for expansion by acquisition of smaller practices.
5. Created a captive that has become an important part of their current and future business operations and plans.

In Conclusion

When the private insurance company was initiated, it was designed to address the singular purpose of addressing the errors and omissions insurance problems. However, with its flexible and creative benefits, this private insurance company has had multiple uses in other areas of concern.

As the private insurance company matured, it has become a multifaceted and important tool for the law firm, its partners, and their overall business planning.

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