Although the majority of midsize established law firms in California (those with fewer than a hundred attorneys) have professional liability (malpractice) insurance, many have not yet purchased an equally important policy—management liability insurance. The need for such insurance arises from the evolution of law firms to that of a corporate structure.

According to Tom Mathias of Monitor Liability Managers, LLC, a leading provider of management liability insurance policies, “Though the legal structure is different, law firms aren’t immune from the same risks as corporations.”

The growing demands of running a law firm require firms to delegate management responsibilities to dedicated officers or committees. This management structure exposes law firm partners to many of the same liability risks faced by the directors and officers of corporate entities.

From small law firms that deal with vendors to large firms that are addressing merger and acquisition opportunities, management liability is a good investment for all firms. The exact actions covered can vary by insurance company and may include coverage for actions previously not insurable. Specific coverage may include claims of mismanagement or negligence in the day-to-day operations of a law firm, partnership agreement and compensation disputes, business tort coverage, punitive damage coverage (when insurable under the law), claims brought by partners not involved in the management of the firm, spousal coverage, coverage for subsidiaries, intellectual property, regulatory actions, and antitrust or restraint of trade allegations.

The type of coverage your law firm needs depends upon multiple factors. You should work closely with your insurance brokerage to determine all of the areas of risks specific to your firm and each of the scenarios for which you could utilize management liability coverage.
One law firm found its management liability policy beneficial when, post-merger, the new law firm was sued by former partners who had declined to participate in the merger and sought the return of their capital contributions. Another tapped into its insurance when partners of the firm sued the management committee for mismanagement over failed plans for expansion into new markets that caused significant monetary losses for the firm. Management liability insurance has also covered claims arising from creditors and vendors regarding misrepresentation.

According to Serge Adam, managing claims attorney of Monitor, one of the greatest benefits of management liability insurance is that the policy can cover multiple exposures under the same general limit, which provides firms cost savings.

Employee issues are the largest sources of claims for most businesses and include claims for wrongful termination, harassment, and discrimination. Law firms can protect themselves from these exposures through a separate employment practices policy or by acquiring a management liability policy that includes employment practices liability coverage. In some policies, endorsements can be included to cover third-party claims or allegations made by employees against nonemployees such as clients or vendors.

Even though management liability policies are broad in scope, some claims are typically not covered, including ERISA and COBRA claims, as these are covered under other types of policies. Claims involving collusion by the insured, fraudulent or criminal acts by the insured, and illegal funds are also typically not covered; however, an initial defense may be provided.

An important feature of some management liability insurance policies is that law firms can specify who is included and who is excluded as an “insured” under the policy. Most insurance policies covering directors’ and officers’ liability exclude coverage for cases brought by one insured against another insured. With the ability to state who is not insured under a management liability policy, this exclusion of coverage can be avoided.

Some management liability coverage allows firms to choose their own legal defense counsel. Others offer a panel of law firms approved to provide defense counsel. Management liability coverage policies are written as a claims-made policy, meaning that the coverage is initiated when a claim is filed. A claim is generally defined as a written demand for monetary damages, civil proceeding commenced by a law-

EMPLOYEE ISSUES ARE THE LARGEST SOURCES OF CLAIMS FOR MOST BUSINESSES AND INCLUDE CLAIMS FOR WRONGFUL TERMINATION, HARASSMENT, AND DISCRIMINATION.
suit, criminal proceeding, administrative or regulatory proceeding/investigation, or arbitration against the firm or partners for a wrongful act. The policies usually cover the amount the firm is legally obligated to pay including settlements, judgments, pre- and post-judgment interest, defense costs, and punitive or exemplary damages.

The cost of a management liability policy will vary depending upon a firm’s potential exposure, history of claims, size, assets, and the location of the firm. In California, a law firm of fifty employees with less than $20 million in assets could purchase $1 million in coverage for $8,000 without credits. However, with credits for lost control, a favorable claims history, and other factors, the costs can be significantly lower. Your insurance broker can gather quotes from multiple insurance companies and work with you and the companies to get the best rates possible.

Management liability coverage is recommended for law firms of all sizes. Larger firms with nonattorneys in decision-making roles will benefit from the coverage extended to management other than partners. Small firms that have employees or creditors are especially vulnerable to claims. Management liability coverage is also important for firms looking to grow, particularly through mergers and lateral acquisitions. The cost of defending a claim that would be covered with such insurance can quickly accumulate and have drastic effects on a firm’s bottom line, no matter what size.

W. Brian Ahern, RPLU, is CEO/president of Ahern Insurance Brokerage (AIB), one of the largest independently owned insurance brokerage firms specializing in the insurance needs of law firms.