



# How to Avoid the Small Firm Tail Coverage Trap

Just as with small businesses in every business sector, small law firms have widely varying outcomes in terms of business longevity. Over the years, I've worked with a few small firms that have been in existence for decades and others that have come and gone in a few short years. For most small firms, regardless of the length of time they've been in existence, a day will eventually come when the front door is closed for the final time. Unless some financial planning has occurred in advance of this day, however, the lawyer or lawyers left standing as this auspicious day approaches may be about to discover they're in a coverage trap. Let me explain.

It's not uncommon to find that in the later stages of a small firm's life, partners have begun to retire or move on, while also choosing to forgo obtaining tail coverage. The rationale for such a decision is this. Former attorney language in the firm's malpractice policy will provide all the coverage they need. Of course, there is an assumption the firm will maintain continuous coverage over the years post departure; but what if these departures are what precipitates the eventual downfall of the firm a year or so later?

In other situations, departures aren't the driver. It might be financial struggles, disharmony among the partners, the death or long-term disability of a rainmaker, burnout, and the list goes on. Regardless of the reasons, in the weeks and months leading up to the dissolution of a firm, the remaining lawyer or lawyers will begin to make inquiries into the availability of tail coverage. Unfortunately, they are sometimes caught off guard when they learn the premium for such coverage is due upfront and the cost for a tail that goes beyond just a year or two is higher than anticipated. This is a coverage trap because too many times the financial wherewithal to cover the expense of putting a tail in place simply isn't there; and now everyone, to include any lawyers who recently departed, may be facing a future with no coverage for their prior acts.

Thankfully, steps can be taken to avoid the problem. It could be as simple as establishing a designated malpractice insurance premium savings account that includes earmarking funds for the eventual purchase of tail coverage. If lawyers begin departing a firm in anticipation of a possible closure, perhaps they should be asked to contribute to this savings account some portion of the estimated cost of purchasing a tail.

The point I'm trying to make is that oft times small firms fail to develop a plan for an eventual winding up of the business. In my mind, that's a business planning misstep that can have all kinds of consequences, not the least of which is ultimately having to deal with tail coverage trap. Learn from the business planning missteps of others. If your firm has yet to start such a plan, now's the time.

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