

**WHAT SHOULD FINANCIAL PLANNERS AND REGISTERED INVESTMENT  
ADVISORS ASK ABOUT PROFESSIONAL LIABILITY INSURANCE?**

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*Our program is committed to increasing awareness and understanding of professional liability insurance for the financial planning/investment advisory professional. To this end, we provide the following list of questions most frequently asked to us as underwriters. We recommend you ask these questions any time you are considering purchasing professional liability coverage.*

- **What is the A.M. Best rating of the carrier?** First Specialty Insurance Corporation is a part of ERC Specialty which is a subsidiary of Employers Reinsurance Corporation, a GE Capital Services Company. Employers Reinsurance Corporation is rated A++ by A. M. Best.
- **What lines of insurance does the carrier write and do financial planning professionals constitute a significant portion of their writings indicating commitment to and experience in the long term insuring of the profession?** In April, 1996, First Specialty Insurance Corporation assumed the financial planning professionals program from Financial Services Mutual Insurance Company (FSM), which was created in 1988 to specialize in financial planning professionals E & O coverage. Former FSM officers continue to underwrite the program today. ERC Specialty emphasizes commercial insurance products for target markets, associations and homogeneous groups. It is ideally suited to provide professional liability insurance for financial planning professionals.
- **Call the Institute of Certified Financial Planners ICFP (1-800-282-7526), the International Association for Financial Planning IAFP (1-404-845-0011) and the National Association of Personal Financial Advisors (NAPFA) (1-800-366-2732) to obtain references for professional liability insurance.**
- **If you have existing coverage which you are replacing, make sure that your retroactive date on your expiring policy is preserved on the replacement policy or you purchase an Extended Reporting Period (tail) from the E & O program you are leaving so that you preserve your coverage for prior acts.**
- **Determine on what basis defense is provided under the policy.** First Specialty's policy has the "right and the duty to defend" which is the strongest defense provision possible. Other defense clauses used in the industry are the "option to defend" (which allows the insurance company to decide whether it will defend you) and/or the provision to provide defense on an indemnity basis where you manage and pay for the defense and then the insurance company reimburses you. FSIC coverage also contains a **consent to settle** clause so be sure to ask about this to assure you have the right to consent to a settlement before it is finalized.

- If your policy is canceled or non-renewed by your insurance company, does it contain language which gives you a **contractual right** (written into the policy language), which cannot be denied by the company, to purchase an **extended reporting period endorsement (tail)** of **at least one year's duration**? Some carriers will give you a contractual right to an extended reporting period endorsement, but this period is only for 90 or 180 days. First Specialty's policy provides a contractual right to an extended reporting period endorsement of one year if we cancel (except for non-payment) or non-renew your policy.
- **Make sure the policy has an "incident trigger" in its definition of claim.** An incident trigger allows you to report not only "written demands" for damages (claims) but also incidents which might reasonably be expected to give rise to a claim at a later date even though you have not had a written demand from a client. First Specialty's policy has an incident trigger which you will find in the DEFINITIONS section of the policy under Definition 3, **Claim**.
- **Ask what the policy covers** i.e. fee activities only, fee and commission activities. Some insurers of investment advisors offer coverage only for fee activities. Subject to policy terms and conditions, the First Specialty policy covers both fee activities and product sales coverage in the areas of securities, life, health, disability and accident products. First Specialty's product sales coverage is designed to be an adjunct to the financial planning activities of the advisor. Therefore, it is designed for mainstream products. **Read Exclusion 30 carefully.** First Specialty "bundles" coverage for both fee and commission activities in one policy to allow for a wide range of variation in the nature of practices. It is not uncommon for practitioners to gradually migrate their practice from fees and commissions to fee-only.
- **Determine how the policy is rated and especially if claims-made step factors are used on renewal rating.** Claims-made step factors are increases in premium which are **not based** on revenues or staff count. Their purpose is to increase the premium in each of the first three renewals eventually leading to a stable fully mature rate which is much higher than the first year rate. The First Specialty program does **not** utilize claims-made step factors. We have created a level rate structure to avoid the sharp increases on renewal caused by claims-made step factors. Renewal rating is no different than new business rating. The premium is driven by number of financial advisors, gross annual revenues, the limits and deductible chosen and the nature of the practice, (i.e. discretion, fee-only, etc.).
- **Ask what discounts are available to you.** First Specialty offers a **multiple advisors discount** if the aggregate limit is shared by more than one advisor. We also offer a **fee-only discount** to practices which do not engage in product sales or **discretionary** asset management. Higher deductible options are available to practices with gross annual revenues of \$150,000 and higher.

## AREAS TO CONSIDER WHEN COMPARING TO A BROKER-DEALER POLICY

- If you are **dually registered** as a registered representative with a NASD broker-dealer and as a Registered Investment Advisor at the federal or state level, and you conduct investment advisory activities "away from" your registered NASD firm, make sure you discuss this with your broker-dealer and confirm the broker-dealer's position on **NASD 94-44** and how any broker-dealer policy regards these activities. If you are not familiar with NASD 94-44, see the August 1995 issue of *CFP Today* or call the ICFP (1-800-282-7526) to obtain more information.
- Remember that the annual **aggregate limit** may be quite high for a broker-dealer policy, but it is **shared by all registered representatives** insured under the broker-dealer policy. The First Specialty aggregate applies only to your practice. Take this into consideration when you are doing limits, premium and coverage comparisons. The greater the number of insureds under the same policy, the greater the risk that the annual aggregate limit can be depleted thus leaving no coverage for any further claims reported during that annual policy period.
- **Consider whether portability is important to you.** Your First Specialty policy is portable regardless of changes in your broker-dealer affiliation or life company affiliations. Under a broker-dealer policy or a life company policy, you may lose all coverage once you change broker-dealer or life affiliations. Your broker-dealer could also lose its insurance or change carriers. **If you have your own policy, you retain control of your insurance.** Under the claims-made policy form, you will maintain your original "retroactive date" (date on which you first obtained claims-made coverage) as long as continuous coverage is maintained in effect without lapse. This will preserve coverage for your prior acts back to the original retroactive date. Consider the importance of portability and the preservation of your retroactive date. When insurance is controlled by someone else acting on your behalf, or by the claims experience of other practitioners, the result may be the loss of your coverage.
- **Consider whether maintaining dual insurance coverage is important to you.** Many practitioners maintain coverage with both FSIC and under a broker-dealer policy. The adviser does this to assure that if anything happens to the broker-dealer coverage, they will still have independent coverage which they control and which maintains their retroactive date. Please read the **Other Insurance** clause in the CONDITIONS Section of your policy for the handling of claims covered by more than one insurance policy. The FSIC policy is excess over any other valid and collectible insurance. If the other insurance policy has similar wording, then, as a practical matter, the two carriers coordinate to work out each carrier's role in a covered claim.