ALAS Loss Prevention Reviews

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Introduction

ALAS conducts loss prevention reviews of its firms on a regular basis, generally visiting each firm once every five years. These reviews involve a general survey of the firm’s claims history and its policies and procedures; it culminates in a series of suggestions to the firm, based on those items and the broader ALAS experience. In some situations, either at the firm’s request or on our own initiative, we have conducted a more focused loss prevention review, taking a closer look at a particular practice area, administrative function, or ancillary business at a firm.

Process

Preparation for a review begins months in advance. We identify issues of concern by reviewing the firm’s claims history, the data revealed in its policy renewal form, and its written policies. Several weeks in advance of the review, we, along with the firm’s Loss Prevention Partner (“LPP”), interview lawyers and staff responsible for discrete risk management tasks. We also ask the firm’s LPP to identify particular issues, practice areas, or even specific offices that he or she would like us to address. Based on all that data, we then tailor our review preparation to fit the specific firm. After meeting with the LPP in person before the review to discuss the firm’s written policies and procedures, ALAS loss prevention counsel, sometimes accompanied by an ALAS claims counsel, conducts an on-site review, which normally takes less than a day.

The firm has discretion to select who attends the review, but the participants should include lawyers and other personnel who have firsthand experience with, and frontline responsibility for, the issues under review. The firm’s LPP(s) should typically be involved in all of the discussions. We also suggest that the firm’s managing partner (or equivalent) or other representatives from the firm’s governing committee attend the entire review. Although firm personnel ordinarily need not travel to attend a loss prevention review, we strongly encourage representatives from each of the firm’s offices to participate in the review, by video- or teleconference when necessary. In addition, we recommend including the firm administrator in both planning and participating in the review.

The review concludes with a meeting with firm management and the LPP at which the ALAS reviewer typically notes the firm’s strengths and makes recommendations for improvements in certain policies and practices. In the months following the review, the reviewer will often follow up with the firm’s LPP regarding efforts to implement certain recommendations.

Underlying Philosophy and Approach
The loss prevention review program is primarily an educational exercise for the benefit of the ALAS firm, including its senior management. The scope of a loss prevention review is broad. Our review involves potentially a wide range of firm personnel, policies, and processes, not just those typically identified with controlling professional liability risks. This broad approach is guided by the ALAS claims experience, which gives us some insight on what causes trouble for ALAS firms. An equally important reason for the breadth of our review, however, is the conviction that the most effective loss prevention program is one that a firm incorporates into its overall business management plan. The implementation of such a program rests not only with the firm’s LPP and ethics committee, but (without diffusing ultimate responsibility) with the firm’s managing partner, management or executive committees, department heads and practice group leaders, and other firm leaders and administrators.

Although the loss prevention review process is primarily for the benefit of the firm under review, all of our firms benefit from the process. Given ALAS’ structure as a mutual organization, we are able to share lessons learned from one firm’s experience – either good or bad – with the other firms ALAS insures.

Our approach varies from firm to firm and evolves over time in response to trends we see in claims brought against ALAS firms. For many years, for instance, we spent a great deal of effort wrestling with new business intake issues and conflicts checking procedures. These efforts reflected the fact that unworthy clients and conflicts accounted for many of the most challenging malpractice cases we faced. Over the years, ALAS firms have steadily improved and strengthened those procedures; today, most ALAS firms have adopted approaches that provide good protection from those problems. While we still review those approaches, we find that we are more often suggesting tweaks and subtle modifications to them, rather than advocating that the firm adopt whole new methodologies.

At the same time, however, other problems have gradually crept into the ALAS claims experience, accounting for an increasing share of the organization’s reserves. Mistakes, for example, have become a major cause of claims. Accordingly, we have modified our review process to increase the focus on issues involving quality control – staffing, supervision, dabbling, and so forth. We talk with practice group leaders about the steps they take (or that they might consider taking) to ensure that ongoing matters are being properly handled. For example, we address certain reports that other firms have developed to flag cases in which the partner may not be supervising the associates appropriately. We discuss specific steps practice group leaders might take to ensure that best practices are shared.

Additionally, we have noted that lateral attorneys tend to account for a disproportionate percentage of claims. We have therefore devoted much attention to the related issues of lateral vetting and lateral integration. Many firms have developed checklists for these processes; we review those in detail and, more importantly evaluate how they are implemented in practice. We talk with office managing partners, practice group leaders, firm administrators, and others involved in the lateral integration process to determine whether the plan is appropriate and consistently followed.
As other concerns ebb and flow in the claims asserted against our firms, our review process will change to adapt. At bottom, however, the reviews are designed to assess whether firms have taken steps to ensure that they are consistently providing quality work to quality clients, that they are complying with their ethical obligations to the clients, courts, and third parties, and that they have created a culture that encourages careful work and discourages risky practices.

**Topics Subject to Review**

As indicated above, the scope of a loss prevention review varies according to the needs of individual firms. The full list of topics we consider spans many pages. Some of those topics include, in no particular order:

- The role of the Loss Prevention Partner and the distribution of responsibility for those functions throughout the firm
- The firm’s claims history since the last review.
- Business intake
- Conflicts checking and management
- File hygiene
- Practice management
- Arriving and departing attorney protocols
- Claims reporting and management
- Quality control
- Oversight of remote offices
- Firm structure and compensation
- Legal opinions
- Audit response letters
- Data security
- Contract lawyers
- Staffing and supervision
The nature of the inquiry precludes a “one size fits all” approach. A firm with 2000 lawyers in 15 offices around the world needs a different set of policies and procedures than a 50 lawyer intellectual property boutique in a single office, even if they both need to reach the same fundamental goals in terms of, for instance, avoiding conflicts. Some firms provide dozens of template opinions, one for each type of opinion that they regularly are asked to give; others simply have a policy stating that any opinion letter must be reviewed by a second partner knowledgeable in the practice area. Either approach might be appropriate for a given firm; conversely, either approach might be a mistake if it is inconsistent with the needs of the firm.

A review of practices and policies cannot be divorced from a review of the firm’s claims history. Some firms have excellent business intake policies on paper, but nonetheless have repeatedly been sued as a result of having represented unworthy clients. In those cases, we have to take a close look at whether the policies are being followed in practice, or whether the firm has permitted lawyers to evade them.

Conclusion

The review process is a lengthy, time-consuming process, but in our view it pays dividends. Individual firms could certainly do some elements of the process on their own. For instance, if a firm was concerned that its file opening process was weak, it could review that process, refine its form engagement letters, and audit its files to ensure that those forms were being used consistently. Tying the process in to the firm’s own claims history and to the broader experience of comparable firms, however, provides a strong foundation to ensure that all the bases are covered.