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Hull & Hull tip – Managing your practice risk

As an estate litigator with Hull & Hull LLP for over twenty years, I try to manage files with an eye to limiting professional exposure wherever possible. But aside from observing best practices, there are few tools available to mitigate my practice risk – and protect my E&O insurance experience and premiums.

This Hull & Hull tip will identify one of the rare opportunities to manage your own practice risk better, even if you only handle estate work infrequently.

“Occasional” executors or trustees – a relative or trusted friend or an advisor named or appointed to an estate – are frequently challenged about their performance in managing estates. Fuelled by information available through the internet, beneficiaries are better informed and more critical of the performance of executors and, by extension, the lawyer for the estate.

Estate lawyers often become the target of an action when the occasional executor is sued for negligence in the administration of an estate.

A new product, executor insurance, became available this year. ERAssure executor insurance is the first product I've seen that covers your executor clients' personal liability should they mismanage the estate. The cost seems low, particularly given the absence of any limitation of liability in favour of the executor.

I recently asked a lawyer, whom we are representing, if he was recommending this product to the executors on his estate files. He told me he was waiting until he encountered a contentious estate that he thought might get challenging for the executor. That answer was surprising, like trying to guess which house might sustain a title claim. Every estate is challenging, and conflict can develop quickly under the right circumstances. The value of the estate really doesn't matter either.

Here are the four reasons I gave him for recommending executor insurance for every estate file:

- It is a specific insurance policy to cover a claim for damages arising from trustee administrative errors made in an estate. When a claim for damage is made against the trustee, the insurance responds.
- When a claim for damages is served on your client, the insurer typically appoints an independent specialist in estate law to provide assistance and direction to the estate lawyer to help resolve the matter. The insurer pays the costs – not your client personally or through the estate assets and especially not you, the estate lawyer.
- If damages are awarded, the insurer pays; the current supplier of this insurance, ERAssure, does not subrogate against the estate lawyer (or their E&O insurer) unless there is some professional misconduct involved.
- There is no cost to the estate lawyer.

This form of insurance is becoming well known as tangible protection for estate trustees. I believe the value to the estate lawyer makes recommending it on all estate files a new best practice.

Yours truly,

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