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'Dear Abby' Law Firm Blogs a No-No, Carrier Says

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One of the largest carriers of lawyers' professional liability insurance has set out guidelines for law firms that want to get into the business of blogging, without hurting their insurability.

In brief, it's fine to post bulletins on Web logs but not to answer questions that could be construed as seeking advice, the Chubb Group of Insurance Companies said in an April 4 statement.

Chubb issued the clarification in the wake of publicity stirred by a March 16 *Law Journal* report that the carrier refused to cover a blog proposed by a Freehold firm, Lomurro Davison Eastman & Munoz. When partner James Paone II called Executive Risk Specialty, a unit of Chubb, he was told "this is not a risk they are interested in undertaking." At the time the article went to press, Paone was awaiting the carrier's fuller explanation.

Since then, word about denial of coverage traveled quickly - not surprisingly, via blogs - and Chubb said it released its April 4 statement to correct "confusing media reports about the company's willingness to insure blogs."

James Rhyner, the worldwide lawyers professional manager for Chubb Specialty Insurance, said in the statement, "Chubb does insure this new form of communication - and will continue to do so within select parameters." [See full text of statement.]

The company said that informational blogs - which are essentially news - "pose a minimal level of risk from Chubb's underwriting perspective," but that advisory blogs - such as those in question-and-answer format - potentially establish attorney-client relationships that can lead to malpractice suits.

"Ninety-eight percent of law firm blogs are purely informational and not interactive. Their exposures are benign," says Rhyner. However, with interactive blogs, "you have a high potential for an unintended relationship," he says. "It's also hard to perform conflicts checks. Comments are made pseudonymously by people in states where lawyers aren't licensed to practice."

Chubb said that as always, its underwriters will evaluate each submission on its own merits.

Rhyner acknowledges that there have been no malpractice suits against blogging lawyers in the United States over bad legal advice. But he cites a U.K. suit involving Lloyd's of London that he is monitoring.

Although intended to clarify its stance, Chubb's statement didn't sit well with bloggers.

Chubb's "big nevermind" was "about as clear as a double expresso," wrote Robert Ambrogi, a Rockport, Mass., media law practitioner in his blog on Law.com, a *Law Journal* affiliate. He said blogs are rarely informational.

New York personal injury lawyer Eric Turkewitz said, "You don't establish an attorney-client relationship blogging. To establish a relationship one needs to have one-to-one communications, not just an opinion shouted to the world."

But Barry Knopf, a plaintiffs' legal malpractice litigator who also runs a blog, says Chubb's wariness is a "very aggressive" response to as yet unrealized risks posed by these electronic forums.

"Any time you put out any information, anyone who's reading it could take it as advice," says Knopf, whose firm, Saddle Brook's Cohn Lifland Pearlman Herrmann & Knopf, is insured by Chubb and saw no premium increase after he set up his blog in January.

"It's really no different than standing around a dining room table at a cocktail party where something a lawyer says is construed as legal advice," he says. "The only difference is . . . it's in writing."

Kevin O'Keefe, a consultant who set up Knopf's blog and others in New Jersey, says there is no reason for an insurer to impute a higher risk to blogging than any other form of communication firms use.

"As lawyers, we know enough to stay away from specific facts," says O'Keefe, president of LexBlog of Seattle, Wash. "We blog about general information. We know we can't publish about certain things because people will be harmed. Lawyers don't want to create liabilities. My advice: Be smart."

O'Keefe recommends that law firms put easily visible disclaimers on their blogs to make it clear they are not offering legal advice.

Chubb did not mention in its statement whether disclaimers affect determinations of insurability. Rhyner says a disclaimer, while not a cure-all, could be helpful if a blog "is on the far end of the exposure spectrum."

Gary Pinckney, an attorney and assistant vice president at Bertholon Rowland in Hackensack, which underwrites malpractice insurance for law firms in New Jersey, advises that firms stay away from puffery in their blogs.

"The bottom line is carriers will scrutinize certain things in certain ways," says Pinckney. "Part of the protocol is to check firm Web sites to see if there's any puffery going on," he adds. An example would be a premises liability firm advertising on its Web site that it handles medical malpractice, too. "That's a red flag to underwriters," says Pinckney.

Rhyner does not expect Chubb's policy on blogs to have a chilling effect. And while most lawyers generally do not check with their insurers before starting their blogs, Rhyner says one of the positive outcomes of the Lomurro case is that they will start to do so.

And where does that leave Lomurro Davison? Paone says he's still in the dark but that he expects to meet with Chubb to learn more about why its proposed blog was considered a risk. Neither he nor Rhyner will discuss the details of the blog, including whether it would be advisory or informational.