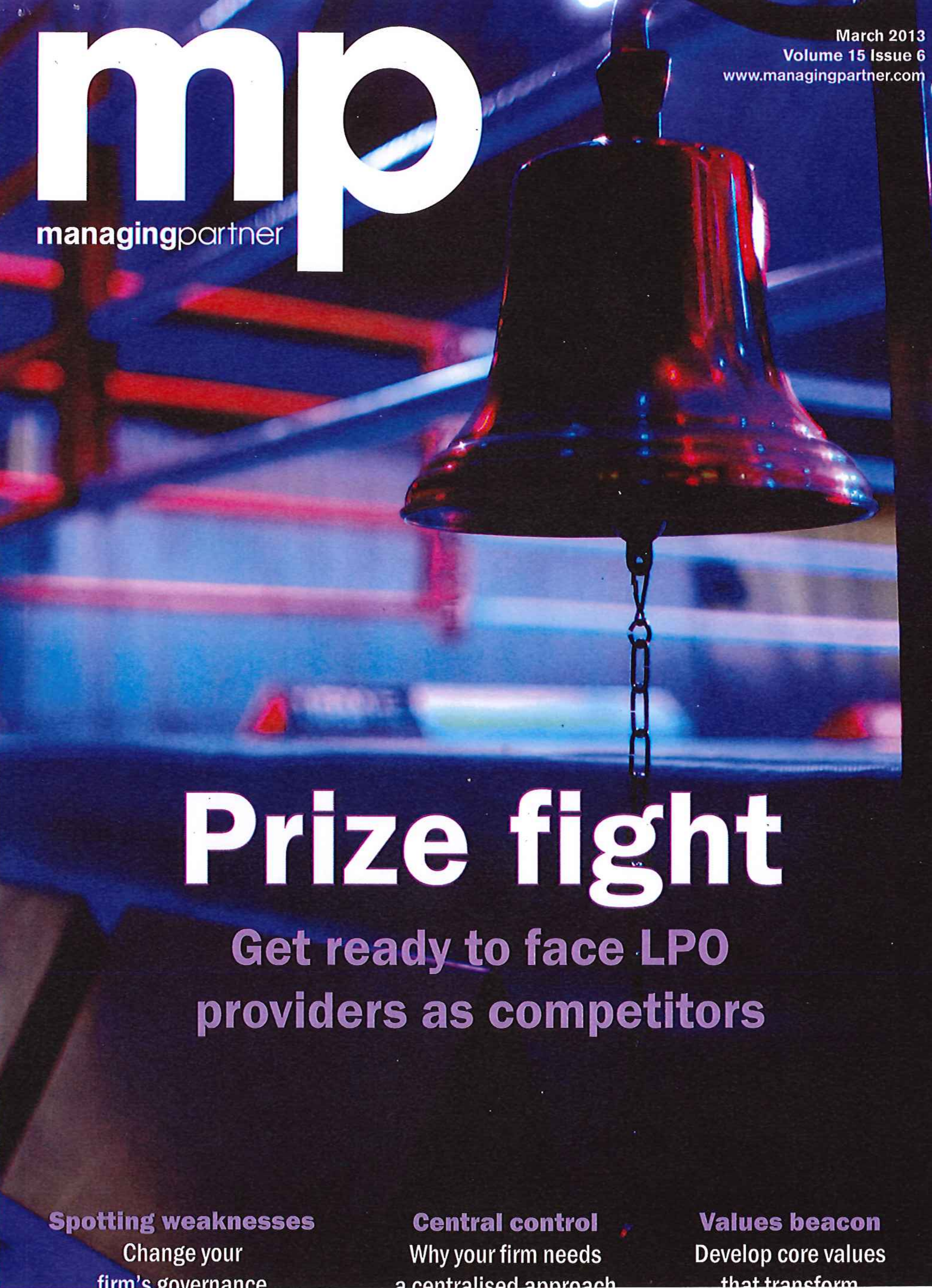

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Insuring earners

Law firms that provide disability insurance can gain an advantage in the battle for top talent, says Connie Golleher

As US law firms compete for the best and brightest legal minds, they are also looking to control the soaring costs of benefits. Finding the right balance is the challenge. One way of boosting benefits with little or no cost to the firm is to sponsor insurance plans that associates and partners pay for themselves. Because of the firm's endorsement, they receive a discount and a better policy from the insurer. It can be a win for everyone.

The most valuable asset a lawyer has is the ability to practice and earn an income. Lawyers are increasingly realising that, if they are unable to work, they risk lifestyle changes unless they have adequate income replacement benefits. The greater the income, the greater the potential loss if they are disabled for an extended period of time.

A disability can happen at any moment and at any point in your life. The majority of long-term disabilities are not due to freak accidents but rather common illnesses such as heart disease and cancer.

At the age of 30, a woman is four times more likely to become disabled than to die, while men are seven times more likely. At the age of 40, there is a 43 per cent chance that a person will have a long-term disability before turning 65. And, at the age of 50, the odds of becoming disabled are more than double the risk of dying.[1]

Lawyers want to secure the maximum benefit, for as little cost as possible, in the easiest manner. Most do not want to leave it up to chance and want to take the necessary steps to ensure their future.

Group disability insurance

Disability insurance is the key, but is a group long-term disability (LTD) insurance plan sufficient? Group LTD is the starting point for income protection for lawyers. But, no group LTD plan alone can provide the full solution for highly-paid associates and partners.

"No group LTD plan alone can provide the full solution for highly-paid associates and partners"

It takes a combination of group LTD insurance plus individual disability policies (IDI) to provide full coverage, and the best way to secure these policies is through an employer-sponsored plan.

Group LTD is typically limited to covering a maximum of 60 per cent of base salary, up to $20,000 (£13,000) to $25,000 a month (or $30,000 to $35,000 at very large firms). To exceed the $25,000 maximum, carriers are looking to have a significant risk spread to justify higher plan maximums.

Insurers are basing their 60 per cent limit on salary only, as group LTD does not replace any bonus income or 401(k) matches – and those extras can account for half of a lawyer's income. Another disadvantage is that, if the firm pays the premium, any payments received could be 100 per cent taxable to the employee, like salary.

Designed for the masses, group coverage is economically attractive, employer owned and has a variable rate structure. The premiums are inherently volatile, so firms should be concerned about the impact of just one claim by a highly compensated partner, which can increase the rates significantly for everyone.

These 'shock' claims, as they referred to in the industry, are changing how law firms and insurance carriers are approaching rates and product offerings.

For example, a firm with approximately 60 partner lawyers, a $20,000 per month group LTD benefit and only one claim worth $10,000 a month of benefits would cause a loss ratio of approximately 350 per cent to the carrier. That carrier would then look to increase the LTD rates significantly at the plan's renewal.

To meet plan objectives, level off potential shock claims and stabilise rates, firms are utilising the integration of group LTD and non-cancellable individual disability income policies. IDI policies are customised, value added and individually owned, with rates that are level.

By integrating the plans, the firm is transferring the risk to an individual platform with level premiums.

There are two primary integration platforms:

1. 'less LTD', which has the group LTD as the base coverage and IDI supplemental on top; and
2. 'reverse combo', which has IDI as the base coverage and group LTD on top.

Both platforms can offer pros and cons and each should be looked at when contemplating adding the IDI component.

Note that group LTD coverage insures a 60 per cent ratio of a lawyer's income up to a cap, which means that, for the highest income earners, they are not receiving the same benefit as others and are considered to be in the reverse discrimination gap. Depending on the taxability of the group LTD coverage, that ratio can be increased up to 75 per cent replacement by adding individual coverage.

Employer-sponsored plans

Lawyers can, of course, buy an IDI policy without help from their firm. But, buying an IDI policy on one's own is difficult because getting insured requires a medical exam, lab work, answering many medical history questions, and financial justification and verification. Law firms can help their lawyers to get a better deal by purchasing or sponsoring supplemental IDI policies.

Sponsoring means that the employer endorses the plan, lets its employees know about the opportunity, provides a meeting space and agrees to payroll deduct the premiums for the coverage.

In return for getting the chance to sell multiple policies, the insurance company provides a better deal. Besides giving the law firm an attractive benefit at little to no cost to the firm, other advantages of employer-sponsored individual policies can include the following.

"Law firms can help their lawyers to get a better deal by purchasing or sponsoring supplemental IDI policies"

- Guaranteed standard issue. A primary reason that firms consider purchasing or endorsing a supplemental IDI plan is that there are no medical underwriting or medical-exam requirements.

  There are just a few questions: has the lawyer been working over the past 180 days, is there an existing disability and what is his/her smoking status. Everyone who is not currently disabled is guaranteed to qualify.

- Coverage of more of the employees' income because other compensation, such as bonuses in addition to base salary, can be used to secure a total compensation benefit amount. When you put both group and individual plans together, you can replace much more income than with either alone.
- Rates discounted up to 40 per cent.
- Non-taxable benefit payments.
- Catastrophic benefits that can replace up to 100 per cent of income for the most serious types of disabilities.
- Portable coverage. The lawyer can keep the individual policy if he/she leaves the firm.
- The ability to convert the disability policy to a long-term care policy.
- Non-cancellable policy – rates can't increase. The premiums can never be increased above the amount shown in the policy and benefits cannot be reduced as long as premiums are paid on time. This is important and differs from coverage that is merely guaranteed renewable. Guaranteed renewable says that you have the right to renew the policy with the same benefits, but the insurer can increase premiums, as long as they are increased for all other policyholders in the same class, having the same characteristics. Although the initial premiums for guaranteed renewable policies may be lower than for non-cancellable policies, they can go up over time.
- Contract language that protects a lawyer's specialty of practice. This is an important component when determining LTD and/or IDI coverage. The definition of disability varies with insurance carriers and with different types of lawyers. The 'own occupation' definition of disability does not always cover a lawyer's skill set. The commonly-seen definitions of disability are as follows.

a. Any occupation – You are disabled and are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training or experience.

b. Your occupation – You are disabled if you are unable to perform with reasonable continuity one of the essential duties of your occupation. In determining 'your occupation', the insurance company is not limited to looking at the way you perform your job for your employer, but it can also look at the way the occupation is generally performed in the local community.

c. Own occupation – You are disabled if you are unable to perform with reasonable continuity the material duties of your own occupation.

d. True occupation – You are disabled, not working in your occupation, receiving your benefit from the insurance carrier and the insurance carrier will continue to pay you even if you return to work in another occupation.

e. Specialty definition – If your occupation is limited to a recognised specialty within the scope of a degree or licence, the insurance carrier will deem the specialty to be your occupation. For example, should your law practice, at the time of disability, be litigation, the insurance carrier would consider your specialty occupation to be that of a trial lawyer.

Why act now

Currently, insurance companies are limiting the provisions that are offered to lawyers, making it more of a niche market. Lawyers are some of the highest income earners and therefore need all forms of compensation covered, not just base salary. Insurance carriers are capping the amount of monthly benefit a lawyer can be insured for.

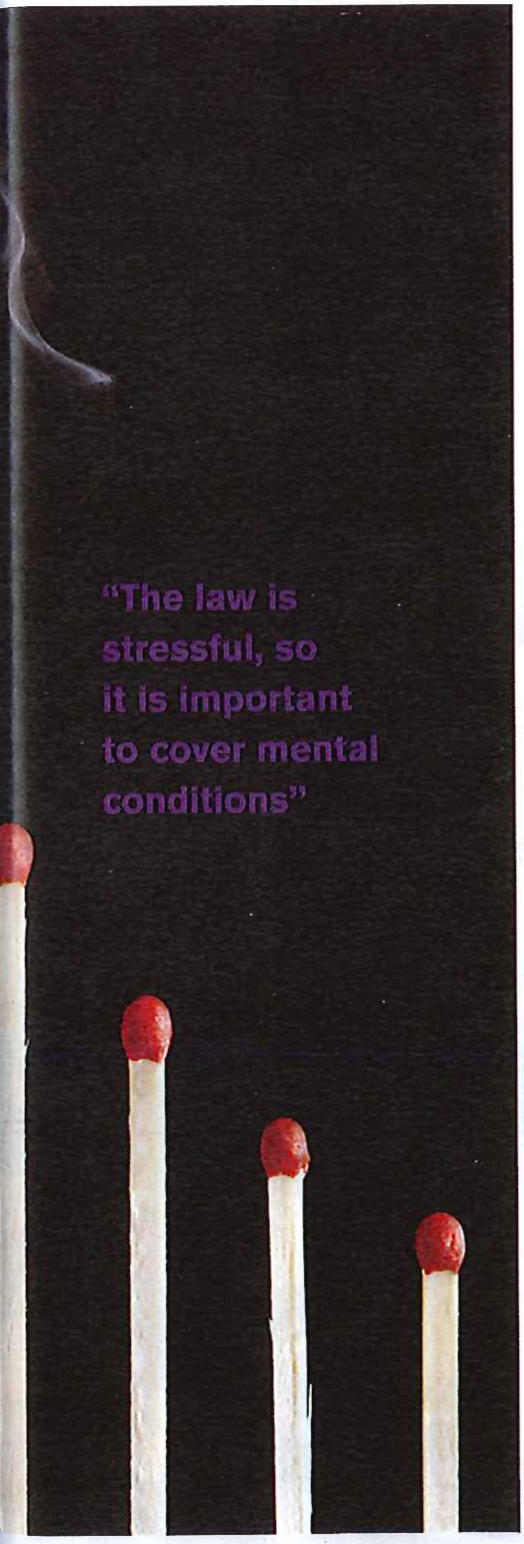
The number one reason for claims by lawyers is mental/nervous disorders and the carriers limit the benefit period to 24 months instead of offering it for the full benefit period.

The marketplace for these IDI policies is small, with only a handful of carriers offering a truly competitive guaranteed standard issue contract. Insurance policies vary widely depending on the insurer and the state in which they are issued.

While combining group and individual policies is adequate for most lawyers, insuring the top earners in the firm is more challenging. Generally, reverse discrimination begins to take place starting at $600,000. The maximum monthly

benefit available to lawyers through normal LTD and IDI channels is $30,000 per month for small to medium-sized firms and $50,000 for larger firms, but usually only when the policies are 100 per cent paid for by the firm.

However, there are insurance companies that specialise in high-income earners. These will participate up to 75 per cent of earned income, with issue limits as high as $200,000 per month. Earned income can include base salary, bonus, commissions and pension contributions. Stock options and grants are not covered due to the potential variability in realised profits. With seven-figure incomes, the maximum benefit at 75 per cent of income is a large number, with an equally-impressive premium.



Implementation steps

Understanding the policy provisions, contract language and processes thoroughly will ensure an easy implementation of this value-added benefit. The basic steps to implementation are as follows.

1. Choose the right insurance agent/financial professional to work with. Often, a group benefits insurance agent is not focused on the individual plans and has limited expertise with the product provisions.

2. Your agent should take a redacted (no names or social security numbers) census to the marketplace to determine the strongest and most competitive offer for the firm. Quotes are tailor fitted to each individual firm, so requests for quotes will vary.

3. Once it has been decided which insurer is best suited for the firm and the enrolment timeline is determined, the communication to the lawyers begins. All agents and insurers have communication pieces that can be tweaked to fit any firm's specific needs. The first step is a pre-enrolment communication from the firm to the lawyers. This document announces the firm's endorsement of the plan and reviews the attributes of the new benefit.

4. Next, personalised enrolment kits are produced and distributed by the insurer and agent. Depending on the insurer, enrolment can be handled face to face, over the phone, over the internet, in group meetings, or by a combination of these. Lawyers usually prefer face-to-face meetings with representatives, where they can get all of their questions answered.

   Don't skimp on any aspect of the enrolment process: it's the key to getting good participation. The agent will do virtually all of the work, but the firm has to provide a clear endorsement and the time and space for the agent to do the enrolment.

5. Policies are issued and distributed to the lawyers.

Emerging trends

There are a few trends law firms should note and watch for.

- Over the past 24 months, insurance companies have seen an increase in the desire to increase benefit maximums. Firms are benchmarking their total compensation package with the competition.

- Firms are electing full mental and nervous benefits. The law is stressful, so it is important to cover mental conditions. For instance, one insurer reports that 25.7 per cent of the claims on one insurance carrier's IDI lawyer block were related to mental/nervous breakdowns.

- Carriers are reducing the rates on individual products due to favourable experience over the past few years.

- Firms are transferring the risk and stabilising costs by shifting the cost of individual policies to associates or partners.

Crafting a comprehensive disability income protection plan for lawyers takes planning and thought. But the market today is more favourable than ever before.

By choosing the right combination of group and individual policies, your firm can get the most cost-effective and attractive plan. mp

Endnote

1. *JHA Disability Fact Book*, 4th ed, JHA Research Center, 2006

Connie Golleher is CEO of The Golleher Group (www.gollehergroup.com) and has more than 20 years' experience in the life, disability and long-term care insurance industry