

Colorado Dentists Start Own Liability Plan¹

The Dentists Professional Liability Trust

Board of Trustees
and John Hamner, President, DIS²

**“Either we all hang together
or we’ll all hang, separately.”**

- Benjamin Franklin

Those words were uttered over 200 years ago by one of our nation’s greatest leaders to emphasize the importance of unite in achieving freedom of choice. More than 114 of the 126 Colorado dentists, whose Occurrence Liability Policies were cancelled in January by The Farmers Insurance Group, joined The Dentists Professional Liability Trust, and 30 or 40 new dentists have joined. Over the last several years we have seen the Commercial insurance Industry limit the Colorado dentists’ freedom of choice regarding the purchase of Professional Liability Insurance. The following is an outline of that chronology depicting the erosion of the freedom of choice in Dental Liability Insurance which initiated the development of The Dentists Professional Liability Trust.

1976-80 – CDA/ADA Co-Endorse the Professional Protector policy issued by the Chubb Ins. Co.

1980 – DIS named administrator and buys the Chubb records and data from former administrator.

1981-83 – Over 90 percent of the Colorado dentists participate in the CDA / ADA Co-Endorsed plan.

1983 – CDA/ADA Professional Protector Policy announces the first of a series of rate increases which change the Liability portion of that premium from \$285 to \$403, and \$1,491 to \$3,600 by 1986.

1983 – CDA withdraws Co-Endorsement and Endorses Home.

1984 – Chubb cancels ADA, and CNA takes over.

1984 – CDA and DIS begin research on Trust.

1985 – CDA withdraws Home endorsement. Trust legislation is drafted for introduction in 1986 legislative session.

1986 – Trust legislation is signed into law. Farmers, which was not endorsed, but was acceptable coverage, announces intention to cancel occurrence policies. ADA withdraws endorsement of Professional Protector Policy.

1987 – The Colorado Dentists Professional Liability Trust is activated and CDA endorses.

During 1983 it became evident to the Colorado Dental Association and to DIS, Inc. the administrator that the insurance industry was in the process of making some significant changes in their Professional Liability coverage. These changes included policy form changes from occurrence coverage to claims made and dramatic premium increases. The Home Insurance Company announced in July of 1985 that it would increase its premium for the Professional Liability portion of the policy from \$172 to about a \$1,000 and use a claims made form which had tail coverage that was inadequate (one year in the event of cancellation of the policy either by the insured or the company, and three years in the event of death, disability or retirement). Given the state of the entire liability insurance market place at that time, the Colorado Dental Association Benefit Plans, Board of Trustees and DIS, Inc., the administrator, realized that we must arrive at a permanent solution to the liability crisis for the dentists of Colorado and that the solution must include some form of control by the Colorado dentists. The ability to move from place to place (freedom of choice) in order to provide our clients and the dentists of Colorado the best quality policy for the price was being eliminated by the claims made forms. The move to the Home Insurance Company in 1983 saved the 1,800 participating dentists about \$300-\$1,000 a year for an aggregate premium savings of about \$1.5 million. The last move from the Home Insurance Company which began in July 1985 to the Farmers policy, which DIS marketed through a Farmers agent in Denver, saved the 1,800 member dentists who participate through DIS another \$800 to \$3,000 dollars a year for the 16 months and provided them with an occurrence policy. That savings amounted to about \$2,000,000 which means that by having the freedom of choice, as inconvenient as the changes were, the Colorado dentists were able to save more than \$3,000,000 in liability insurance premiums. Those changes were time consuming and did not provide permanent solutions. Eighteen to 24 months ago, your Association and your administrator began the steps necessary to have enabling legislation passed through the Colorado State Legislature allowing Colorado dentists to form The Dentists

Professional Liability Trust to self-insure their professional liability risk. That was only possible because DIS, Inc., being the plan administrator since 1980, had all of the data necessary to track, essentially, every claim against the Colorado dentists since that date, and your Association’s Board of Trustees and Officers had the foresight to provide the resources of the CDA executive office to lobby the legislation.

The formation of The Dentists Professional Liability Trust was not a decision that anyone wanted to make. It was forced upon us by the actions of the Farmers. In August of 1986 the Farmers insurance group informed DIS and the CDA that they would, beginning immediately, cancel the Colorado dentists occurrence policies, as they came up for renewal and replace them with a claims made policy that had no tail. That was not only illegal; it would have eliminated the freedom of choice for the dentist, since no tail or inadequate tail coverage allows the insurance company to hold the insured hostage to almost any sort of future actions regarding coverage and premiums.

The Colorado Dental Association and DIS, Inc. informed the Farmers that they would begin the steps necessary to activate a Trust and that 90 days notification was necessary to cancel a professional liability policy. The disclosure to the Farmers Insurance Group of the possibility of a Trust caused them to reconsider the offering of a claims made policy with no tail. Their next response was that they would begin cancelling the occurrence policies with January 1st renewal dates and offering a claims made policy with a five year tail. In late November and early December of 1986 the discussions about an adequate tail for the Farmers claims made policy had reached the point that it was evident that neither the Colorado Dental Association nor DIS, Inc. could convince the Farmers to issue comprehensive tail coverage. We therefore indicated to the Farmers that we would make the Trust policy available to the dentists whose policies began renewing in January. If a dentist became a part of the Farmers claims made program with only a five year tail available and no guaranteed premium for the tail, they could be held hostage to almost any premium or policy decision the Farmers Insurance group made because of the inability to fully cover their past practice of dentistry. The insured would lose the freedom of choice. To be covered by a claims made policy, the insured dentist must have a tail available in the following circumstances:

1. Death

2. Disability
3. Retirement
4. The insured cancels the coverage
5. The company cancels the coverage (as Farmers is now doing).

To maintain the freedom of choice, the cost of the tail must be guaranteed in writing.

When the Trust began issuing policies on January 1st, the Farmers sent a communication to the dentists, whose occurrence policies they were cancelling, indicating that sometime in 1987 they would have an unlimited tail available for the claims made policy. That communication did not indicate under what circumstances that tail would be available nor the dollar cost of the tail.

It is clear now that the ability of the Colorado Dental Association to self-insure is the only reason Farmers Insurance Group is indicating that some time in 1987 it plans to offer unlimited tail for its claims made policy. The Colorado Dental Association has eliminated a potential monopoly and provided freedom of choice.

Unfortunately, with choice comes comparison and possible confusion, particularly when the competitors raise fears with misleading and emotional statements. For years the commercial insurance carriers have been telling dentists that they can do the best job of providing this important insurance, but all they have done recently is cancel coverage, raise rates, and reduce benefits.

The following are some answers to the most commonly asked questions that Colorado dentists have regarding the Trust. These answers will help in understanding the viability of the Trust and to place the statements of the competitors in their proper perspective.

1. When does the Trust expect to pay its first claim? Since the Trust will not be responsible for claims arising from acts prior to January 1, 1987, it does not expect to pay its first claim for six to eight months. Any significant claim (over \$50,000) is not expected to be paid for one to one and one-half years due to the time lag associated with the judicial system on typical dental liability claims procedure.

2. Where will the money come from, especially if the Trust has large claims in the early stages of development? The funds can be generated in two ways. The Trust's January experience shows it will enroll 150 to 160 dentists a month with each class, class one dentists paying \$590 and class two dentists paying \$1180. These premium payments should create a Trust fund balance of over \$500,000 in the first six months and approximately \$900,000 within the first twelve months; interest adjusted, this fund could be

greater. Second, each participating dentist agrees to provide to the Trust, if it is actually necessary, a once-in-a-lifetime contingent capitalization³ of up to \$2,000. This can generate three to four million dollars in reserves. These two funding mechanisms are why dentists can feel confident of the Trust's success, particularly since the average annual claims paid over the past three years has been approximately \$400,000.

3. Is it true that the Trust was established overnight as stated by some representatives? Upon examination of the chronological order of events, one will find that the Trust was conceived and developed over 18 to 24 months and involved various experts in law, insurance, dentistry and actuarial science as well as many Colorado dentists.

4. The Trust has been referred to as a "reporting form policy" with a "guaranteed occurrence conversion option". What do these terms mean? A reporting form policy allows the dentist to report any incident he or she feels may be the beginning of a liability suit, even before the patient complains or the summons and complaint arrive from the attorney's office. The dentist has gone on record and is from that day forward covered for an unlimited period of time for a claim arising out of that incident, whether or not he or she is still insured under the Trust and whether or not the patient mentions anything for years.

A "guaranteed occurrence conversion option" allows the dentist, for a specified additional premium, to be afforded coverage on an unlimited basis for claims arising from alleged negligence he or she did not report when insured.

5. Why is the guaranteed occurrence conversion option important? Because if the dentist dies, becomes disabled, retires, if he cancels the Trust coverage or the Trust cancels him, as Farmers is now doing, he

needs to be insured against future claims arising from negligent acts he may be charged with when insured. The occurrence conversion options guarantee that under any circumstances, he can pay a one time additional premium and be covered forever. The conversion option is free once he has been insured for five years, if he retires, or becomes disabled or dies. The presence of the conversion option also reduces costs today as the Trust doesn't have to pre-fund of an unknown future risk that may or may not exist.

6. Am I guaranteed access to the Trust? No. The dentist must be a Colorado Dental Association member in good standing and must have demonstrated a consistent track record of good quality dental care.

7. Can I accept the cancellation by Farmers of my coverage on my expiration date and join the Trust and not worry about future claims that may arise from the time I had the Farmers coverage? Yes. If the policy was issued through DIS, it is an occurrence policy. DIS did not enroll any dentists in the Farmers claims made policy. If you bought the Farmers claims made policy elsewhere, or if you buy the new Farmers claims made policy in the future, then you will have difficulty changing coverages as your claims made policy will force you to either pay an additional premium or go bare. If the past is any indication of what the future holds for the commercial dental insurance market, this additional cost may be the least of your problems, especially if an unlimited tail is not available.

8. How does my Trust provide a permanent solution? The Trust is managed by dentists who participate in the Trust and are elected by the participants. It is administered by DIS at the direction of "dentists for dentists."

FOOTNOTES

1. This article was originally published in the Journal of the Colorado Dental Association, March/April 1987, Volume 65 No. 5. It is presented here as it was originally published, with footnotes regarding some of the significant changes since 1987.

2. DIS was purchased by the W. R. Berkley Corporation in 1989 and no longer uses the name "DIS", avoiding confusion with unrelated entities using that name. It currently operates as Berkley Risk Services of Colorado. John Hamner retired in 1995. David Daugherty is the current president of Berkley Risk Services of Colorado.

3. Due to the financial stability of the Trust, the contingent capitalization requirement was removed in 1999. The only contribution that is required of the participating dentists is the annual premium. The Trust has also entered into reinsurance agreements since 1989, which limits the losses paid by the Trust.