

MALPRACTICE INSURANCE REPORT

With more insurance companies looking to do business in California this year, legal malpractice premiums should stay flat, or dip slightly. But be warned: Attorneys need to stay abreast of technology.

Insurance companies want their law firm clients to be “more state of the art” in terms of using technology, says Carol Bauman, vice president of Daniels-Head Insurance in California, an administrator for Zurich North America. “If attorneys are not savvy from a technological standpoint, then they may not be meeting the standard of care.” In fact, she says, they could be charged higher premiums as a result.

Edith Matthai, a Los Angeles attorney specializing in legal malpractice, says she has seen a lot more claims arising from technology issues, including preservation of evidence and electronic discovery. Not only that, but in December a new set of Federal Rules of Civil Procedure concerning the discovery and management of electronically stored information took effect.

During the past few years, as more clients have charged their attorneys with conflicts of interest, insurance companies have come to expect firms to be equipped with computer software that can detect potential conflicts from the outset. Such

software is great for catching cases in which a firm represents or has represented one of the parties, says Michael B. Murphy, head of Severson & Werson’s Insurance Practice Group in San Francisco. “But in terms of less visible or less readily definable conflicts, such as subject-matter conflicts”—representing a client who claims that another of the firm’s clients has a competing business or marketing interest—“that’s very, very difficult,” he says.

Even a firm’s website is not exempt from scrutiny. “We Google [our insured] firms on a regular basis to find out what they say on their websites and how sophisticated their websites are,” says Dan McKenna, lawyers’ program manager at Mitchell & Mitchell Insurance Agency. “Sometimes this helps us determine if they are a risk or not.”

For example, firms can run into problems when they puff themselves up on the Web. Attorneys might list entertainment law as an area of practice when in fact it is simply a type of case they hope to take on. “If something goes wrong and you end up in court,” McKenna says, “that website becomes a huge bulletin-board picture in the courtroom.”

Following is our yearly review of the carriers that offer professional liability coverage to California attorneys.

—Kelly Niknejad



COMPANY	BEST'S RATING*	RESTRICTIONS BASED ON FIRM SIZE/SPECIALTY/PRACTICE AREA	LIMITS OF LIABILITY	DEDUCTIBLE	IS INPUT ALLOWED IN SELECTION OF COUNSEL?	IS THERE A PROGRAM TO PREVENT MALPRACTICE SUITS?	YEARS COVERING CA LAWYERS	ADMITTED IN CA?
ADMIRAL INSURANCE COMPANY 847/806-6590, www.admiralins.com	A+	Firms with three or more attorneys	Up to \$5 million	\$10,000 or higher	Yes, if provided by endorsement	Yes, malpractice hotline	13	No
ARCH INSURANCE COMPANY (sponsored by the State Bar) 800/343-0132, www.archinsurance.com	A-	None, but available deductible and limit-of-liability options may vary depending on size of firm, areas of practice, and claim history	Up to \$10 million per claim/annual aggregate	Up to \$250,000 per claim; loss-only and annual aggregate deductibles available for qualifying firms	Yes	Yes, seminars in cooperation with the State Bar; risk-management website, and a toll-free hotline	5	Yes
ATTORNEYS' INSURANCE MUTUAL RISK RETENTION GROUP, INC. James Belding, 201/460-6726, or Bruce Wilson, 203/655-1639 www.aimrrg.com	Not rated	Firms with 45 or more practicing attorneys	\$15 million to more than \$100 million	\$500,000	Yes, insured has choice	Yes	21	Yes
ATTORNEY'S LIABILITY ASSURANCE SOCIETY, INC. (ALAS), A RISK RETENTION GROUP 312/697-6900, www.alas.com	Not rated	Firms with 35 or more practicing attorneys	Up to \$75 million per claim/\$150 million aggregate	Retention: \$100,000 per claim/\$300,000 aggregate to \$3 million per claim/\$6 million aggregate	Yes, firm selects defense counsel subject to approval by ALAS	Yes, including Loss Prevention Journals; email hotlines; firm seminars; Loss Prevention Manual; videos; management guides; and practice area consultation groups	28	No
AXIS U.S. INSURANCE COMPANIES Adam Sharaf, 860/707-1707, www.axiscapital.com	A	Firms with ten or more attorneys	Up to \$25 million	Minimum of \$25,000	Yes	Yes, risk-management services and hotline for primary insureds	3	Yes
CALIFORNIA AON ATTORNEYS' ADVANTAGE INSURANCE PROGRAM (L.A. County Bar Association-sponsored program), Chris Brammer, 818/655-1305, www.attorneys-advantage.com	A	None, but underwriting guidelines apply	\$100,000 per claim/\$300,000 aggregate through \$5 million per claim/aggregate	\$1,000 to \$100,000	No provision, but insured's input will be considered	In development	16	No
CAROLINA CASUALTY INSURANCE COMPANY 847/806-6590, www.carolinacas.com	A	Firms with three or more attorneys	Up to \$5 million	\$10,000 or higher	Yes, if provided by endorsement	Yes, malpractice hotline	13	Yes
THE CHUBB GROUP OF INSURANCE COMPANIES James Rhyner, 908/903-5183, www.chubb.com	A++	Firms with ten or more attorneys. Does not cover intellectual property firms.	Up to \$10 million per claim. Limits up to \$20 million and excess limits also available.	\$25,000 minimum per claim. No aggregate retentions offered at present.	Yes, insured has choice, but no defense expenses may be incurred without underwriter's consent	Advice from risk-management counsel available upon request; e-newsletter, handbooks, and seminars	15	Yes
THE COLONY GROUP Art Davis, 480/889-5804, www.colonyins.com	A	No more than 40 lawyers per practice. Real estate development, syndication, or investment visa work is prohibited.	Up to \$6 million each occurrence/\$8 million aggregate on select accounts	\$5,000 to \$100,000	Insured's input will be considered	No	10+	No
CONTINENTAL CASUALTY COMPANY (CNA) Mitchell & Mitchell (1 to 34 attorneys), Dan McKenna, 800/247-1403, www.mitchellandmitchell.com; CNA Pro (35 or more), Stuart Pattison, 212/440-7447, www.cnapro.com	A	None	Up to \$15 million	\$5,000 or higher	Yes, on an exception basis by endorsement	Yes, risk-management seminar programs, malpractice hotline, and semiannual periodicals	23	Yes
FEDERAL INSURANCE COMPANY (part of the Chubb Group of Insurance Companies), Myles Alonzo, 415/433-7700, ext. 10, www.chubb.com	A++	Firms with two to nine full-time attorneys; no class action or securities work, no mass tort litigation; tax work up to 10 percent	Up to \$5 million	Varies	Selection from list of Chubb-approved counsel	Three free CLE seminars touching on various legal malpractice issues	10+	Yes

*A.M. Best's Financial Strength Rating is an independent opinion, based on a comprehensive quantitative and qualitative evaluation of a company's balance sheet strength, operating performance, and business profile.

Volvox/Index Stock

The grades measure Best's opinion of the insurer's ability to meet its obligations to policyholders. See Best's website (www.ambest.com) for more information, such as financial size of the companies.

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FIRST MERCURY INSURANCE COMPANY John Biggio, 800/982-1151, ext. 18, www.firstindemnity.net	A-	None, firms with 1 to 200 attorneys	Up to \$5 million	Minimum of \$1,000	Yes	Yes	7	No
GOTHAM INSURANCE CO. (parent company NYMAGIC, Inc.), Ed Skoch, 212/551-0600 www.nymagic.com	A	None, but generally smaller firms (with up to 30 attorneys) and sole practitioners, including attorneys engaged in intellectual property law	\$2 million	No restrictions	Depends on circumstances	Yes, loss-prevention program includes toll-free help line	4	No
GREAT AMERICAN INSURANCE COMPANY (GAIC) 800/299-4331, www.greatamericanlawyer.com	A	None	Up to \$10 million per claim/aggregate	Minimum of \$2,500, maximum of \$500,000	Yes	Yes, newsletter, topic advisories, online CLE, seminars, audiotapes, and law firm audits	16	Yes
HARTFORD SPECIALTY Susan Glenn, 212/277-0746, www.hfpinsurance.com	A+	No intellectual property or plaintiff class action work	Up to \$15 million per claim/aggregate	Minimum of \$25,000	Yes, mutual choice	No	N/A	Yes
INTERSTATE FIRE AND CASUALTY COMPANY (a member of Fireman's Fund Specialty), Beth Graham, 800/692-5752, ext. 236, www.ffc.com	A	Niche coverage for firms with an area of practice that no longer fits the standard market. Includes securities, copyright, patent, trademark, entertainment, some class action work.	Maximum of \$5 million. Excess limits are also available.	Minimum of \$5,000	No	No	19	No
JAMES RIVER INSURANCE COMPANY John Clarke, 804/289-2700, www.jamesriverins.com	A-	Firms with 1 to 15 attorneys; no firms that have large intellectual property practices or that do SEC work involving publicly traded companies	Up to \$5 million	Varies	No	No	4	No
LAWYERS' MUTUAL INSURANCE COMPANY 800/252-2045, 818/565-5512; John Burke, ext. 214, or Cathy Sargent, ext. 227, www.lmic.com	A	None for standard program or Strong Start program for lawyers in practice less than 36 months. Specialized lower-premium programs for appellate, immigration, criminal, insurance defense, and arbitration/mediation lawyers.	\$100,000 per claim/\$300,000 aggregate, up to \$5 million per claim/\$7 million aggregate for standard program	\$1,000 to \$100,000 per claim for standard program	No	Yes, loss-prevention and risk-management seminars, bulletins, tapes, MCLE website	29	Yes
LAWYER'S PROTECTOR PLAN (underwritten by Greenwich Insurance Company, a member of XL Capital Group), 800/336-5529, ext. 4207 www.lawyersprotectorplan.com	A+	No automatic declines; program is for firms with one to ten attorneys, but also able to broker eleven-plus	Up to \$5 million per claim/aggregate	Up to \$100,000	Yes	No	20+	Yes
LIBERTY SURPLUS INSURANCE CORPORATION (a member of the Liberty Mutual Group), Justin Camara, 415/983-4520, or Chris DePuy, 212/208-4157, www.libertyiu.com	A	Firms with up to 125 attorneys (primary), firms with 5 or more attorneys (excess)	Up to \$10 million	Starting at \$25,000 per claim	At underwriter's discretion, insured's input considered	No	6	No
LLOYD'S OF LONDON (underwritten by Egloff Risk Management Systems) Al Hernandez, 818/992-5744, www.loyds.com	A	None	\$250,000/\$250,000 to more than \$20 million/\$20 million	Minimum of \$10,000	Yes, but selection must be approved by the underwriters	Yes, tailored risk management for law firms	30+	No
NAVIGATORS PRO Israel Notoma, 212/244-2333, or Godfrey Brown, 212/613-4261 www.navg.com	A	Firms with up to 150 attorneys. Caps of 25 percent on SEC, intellectual property/patent, plaintiffs private investigators, and plaintiffs workers compensation cases; no class action work.	Up to \$10 million	Minimum of \$10,000	Insured's requests will be considered	No	6	No
NEW YORK MARINE AND GENERAL INSURANCE CO. (parent company NYMAGIC, Inc.) Ed Skoch, 212/551-0600, www.nymagic.com	A	None, but generally smaller firms (with up to 30 attorneys) and sole practitioners, including attorneys engaged in intellectual property law	\$2 million	No restrictions	Depends on circumstances	Yes, loss-prevention program includes toll-free help line	4	Yes
ONEBEACON INSURANCE COMPANY Kim Pinistrom, 312/821-4710, www.onebeacon.com	A	Firms with up to 150 attorneys	\$10 million	Minimum of \$1,000	Yes	Yes	1	Yes
PILOTLEGIS, RPG (Aon is exclusive broker), Margaret Hepper, 201/460-6723 www.pilotlegis.com	Not rated	General commercial, intellectual property, and insurance defense firms with 20 to 200 attorneys; contingent upon successful completion of risk review	Up to \$30 million	Negotiable	Yes, insured has choice	Yes, annual risk-management programs, on-site presentations, and annual reviews	16	No
PROSECURE® LAWYERS RISK PURCHASING GROUP (written through Hiscox, a Lloyd's of London facility) Mary Whisenand, 800/371-2246, www.personal-plans.com/prosecure	Not rated	Solo lawyers and small law firms that have difficulty obtaining coverage due to claims, practice areas, or other underwriting restrictions. Full prior acts coverage is available to qualified firms.	Up to \$5 million per claim/aggregate	Minimum of \$5,000, maximum of \$250,000 per claim	No, unless specifically underwritten	Yes, education and risk-management seminars	4	No
QUANTA SPECIALTY LINES INSURANCE COMPANY Jerry O'Dwyer, 212/373-1874 www.quantaholdings.com	A-	Firms with 5 to 100 lawyers; firms with more than 100 on an excess basis only. Firms with significant practice in medical malpractice plaintiff, class action plaintiff, entertainment, or patent practices will be selectively considered for excess options only.	Up to \$10 million	Minimum of \$25,000	Yes, mutual choice	No	2	No
STATE NATIONAL INSURANCE COMPANY (a member of the State National Insurance Group) John Biggio, 800/982-1151, ext. 18, www.firstindemnity.net	A	Firms with 1 to 200 attorneys	Up to \$5 million	Minimum of \$1,000	Yes	Yes	7	Yes
SWISS RE (underwritten by Westport Insurance Corporation) Mike Furlong, 800/255-6931, www.swissre.com	A	Top-tier firms with 20 to 250 attorneys in all areas of practice, subject to underwriting guidelines	Up to \$10 million (expecting to launch product for excess liability)	Based on firm size	Company reserves right to select counsel, but requests considered, available by endorsement	Yes, free, confidential hotline for a defense firm; newsletter; and website	36	Yes
ST. PAUL FIRE & MARINE INSURANCE COMPANY (endorsed by Defense Research Institute), Willis of New Hampshire, J. Norman Monfort, 813/490-6844, www.willis.com	A	Minimum 51 percent defense practice required	Up to \$2 million per wrongful act	Minimum of \$5,000 per wrongful act	Yes, mutual counsel selection	Yes, risk-management materials and visits may be arranged	11	Yes
TARGET (underwritten by Hartford), Shawna Reidy, 800/692-5752, ext. 214 www.target-capital.com	A+	Firms with up to 20 attorneys; no claims filed in past five years	Up to \$5 million	Minimum of \$5,000	Yes, mutual selection	Yes, hotline available for Hartford insureds	25+	Yes
UNITED NATIONAL INSURANCE COMPANY (underwriting agent), Michele McCrohan, Synergy Professional Associates, 973/995-0519, www.unitednat.com	A	None, but company specializes in hard-to-place firms with claims, practice area, or ethics problems	Up to \$2 million per claim for primary coverage	Minimum of \$2,500 for standard accounts and \$5,000 for hard-to-place accounts	Negotiable	No	16	No
XL SELECT PROFESSIONAL, A DIVISION OF XL AMERICA, INC. (endorsed by the Bar Association of San Francisco and the San Diego County Bar Association) Greg Hayden, vice president, 972/383-7152, www.xlprograms.com	A+	Firms with 11 to 100 attorneys	Up to \$10 million	\$5,000 to \$100,000	Yes	No	7 (4 as XL, 3 representing Kemper Insurance)	Yes
ZURICH NORTH AMERICA (California administrator) 800/848-7160, www.zurichna.com	A	None for standard program (full time), although underwriting guidelines apply; part-time and moonlighting policies available to qualified attorneys	\$100,000 per claim/\$300,000 aggregate, up to \$10 million per claim/aggregate	Depends on policy form and firm size; many options available, including \$0 (zero) deductible and loss-only deductibles	No provision, but suggestions considered	Yes, loss-prevention advice hotline, and VersusLaw Legal Research Database on Internet, both at no charge to policyholders	12	Yes