

MALPRACTICE

INSURANCE REPORT

AS THE ECONOMIC DOWNTURN DEEPENS, malpractice insurance carriers expect lawyers to get sued more. “When more businesses fail, people tend to look for someone to blame for the money they lost, and lawyers are among the most likely targets,” says Greg Hayden, vice president of XL Select Professional. Even so, with plenty of carriers willing to compete aggressively, premium prices are still declining. “Prices are clearly inadequate for the risk,” says Hayden.

Most carriers continue to base discounts on “a firm’s claims history of five to ten years, potential conflict of interest vulnerabilities, controls and procedures, and a minimum of two calendaring systems—one computerized and one paper” to militate against missed deadlines, says Carol Bauman, vice president of Daniels-Head Insurance Agency.

A new factor that could also affect the malpractice insurance market is the rule of professional conduct that’s awaiting approval by the California Supreme Court. It would require lawyers to immediately inform clients in writing whether they have malpractice coverage, if their representation lasts more than four hours. Currently, more than 30,000

of the state’s lawyers lack malpractice insurance.

Ed Poll, a Venice-based author and business consultant to lawyers, argues that mandatory disclosure will place “undue burdens” on small firms and sole practitioners. Up to 40 percent of the state’s lawyers are solos, and 38 percent work in firms with between 2 and 20 attorneys. “Many carriers won’t cover a lot of them who may be in high-risk areas like securities,” Poll says. He also contends that by mentioning they have coverage, lawyers could inadvertently actually encourage clients to sue—the assumption being that malpractice carriers would be the ones to pay a claim.

It remains to be seen whether the mandatory disclosure rule will convince many attorneys to purchase coverage. More uninsured attorneys may buy policies with lower limits, says Hayden, but many will probably remain uninsured. As Poll notes, a quarter of the state’s lawyers earn less than \$50,000 a year, and annual insurance premiums range from \$4,000 to \$7,000. He expects the Supreme Court to “rubber stamp” the Bar Board’s proposal.

The carriers in the chart below offer professional liability coverage to lawyers in California.

—compiled by HELEN CHRISTOPHI and RENE CIRIA-CRUZ



| Company | Best's Rating* | Restrictions Based on 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 Randy Mrozowicz, 800/446-2100, ext. 531 www.monitorliability.com | A+ | Firms with 3 or more attorneys | Up to \$5 million | Minimum of \$2,500 | Yes, if provided by endorsement | Yes, a risk-management/malpractice hotline | 15 | No |
| ARCH INSURANCE COMPANY 800/343-0132 www.proliability.com/lawyer | A | None | \$100,000/\$300,000 to \$10 million | \$0 to \$50,000 | Yes | Yes | 7 | Yes |
| ATTORNEYS INSURANCE MUTUAL RISK RETENTION GROUP, INC. (AIMRRG) James Belding, 201/460-6726, or Bruce Wilson, 203/655-1639 www.aimrrg.com | Not rated | Firms with 45 or more practicing attorneys | \$100 million or higher | \$500,000 | Selection of counsel made by the member firm in cooperation with AIMRRG and subject to approval by the risk-retention group | Yes | 23 | Yes |
| ATTORNEYS LIABILITY ASSURANCE SOCIETY, INC. (ALAS) A Risk Retention Group Nancy Montroy, 312/697-6900 www.alas.com | Not rated | Firms with 35 or more practicing attorneys | Up to \$75 million per claim/\$150 million aggregate | \$175,000 per claim/\$350,000 aggregate/\$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 | 30 | No |
| AXIS INSURANCE COMPANY Adam Sharaf, 860/707-1707 www.axiscapital.com | A | Firms with 10 or more attorneys | \$5 million or less on firms with 50 or fewer attorneys | Minimum of \$25,000 | Yes | Yes | 5 | Yes |
| CAROLINA CASUALTY INSURANCE COMPANY Randy Mrozowicz, 800/446-2100, ext. 531 www.monitorliability.com | A | Firms with 3 or more attorneys | Up to \$5 million | Minimum of \$2,500 | Yes, if provided by endorsement | Yes, a risk-management/malpractice hotline | 15 | Yes |
| CONTINENTAL CASUALTY COMPANY (CNA) Dan McKenna, 800/247-1403 www.mitchellandmitchell.com | A | None | \$250,000/\$500,000 to \$10 million | \$5,000 to \$100,000 | Yes, on an exception basis by endorsement | Yes, hotline, risk-management seminars, and periodicals | 25 | Yes |
| FEDERAL INSURANCE COMPANY (part of the Chubb Group of Insurance Companies) Joe Pinkowski or Keltie McCloskey, 415/433-7700 www.cmiprorisk.com | A++ | Firms with 2 to 9 attorneys; will consider those with up to 2 claims within the preceding 5 years | \$100,000/\$300,000 up to \$3 million/\$3 million | Minimum of \$5,000 | Duty to defend; on select cases, choice of counsel is negotiable | Loss-control services | 25 | Yes |
| FIRST MERCURY INSURANCE COMPANY John Biggio, 800/982-1151 www.firstindemnity.net | A | None | Up to \$10 million/\$10 million | Minimum of \$1,000 | Yes | Yes | 9 | No |

*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. 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 and their statutory surplus and related accounts.

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|---|----------------|---|---|---|--|--|---|-----------------|
| HARTFORD FINANCIAL SERVICES GROUP (underwritten by Target Insurance Services) Shawna Reidy, 800/692-5752, ext. 214 www.target-capital.com | A+ | No patent or class action work; 5% cap for trademark; 5% cap for SEC work; 5% cap for entertainment work; 10% cap for oil/gas/mineral work; will consider 100% plaintiff without class action; 30% cap for plaintiff and medical malpractice | Up to \$10 million | Minimum of \$5,000 | Yes, mutual choice offered | Free third-party hotline | 27 | Yes |
| JAMES RIVER INSURANCE COMPANY John Clarke, 804/289-2715 www.jamesriverins.com | A- | Firms with 25 or fewer attorneys; no intellectual property, IPO, or similar public corporation work | Up to \$5 million on either a primary or excess basis | Varies | Yes, but company reserves the right to make the final decision | No | 5 | No |
| LAWYERS' MUTUAL INSURANCE COMPANY Cathy Sargent, 800/252-2045, 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, MCLE website (State Bar-approved provider) for loss-prevention and risk-management seminars (audio and video); bulletins for policyholders; loss-prevention hotline | 30+ | Yes |
| LAWYER'S PROTECTOR PLAN (underwritten by Greenwich Insurance Company, a member of XL Insurance) Danielle Hardiman, 866/383-3786 www.lawyers.protectorplan.com | A | None; each account underwritten on its own merit | Up to \$5 million/\$5 million | Up to \$100,000 | Yes | Yes | 20+ | Yes |
| LIBERTY INSURANCE UNDERWRITERS (member of Liberty Mutual Group) Joe Guerrero, 617/482-3100 www.attorneys-advantage.com | A | N/A | \$100,000/\$300,000 up to \$10 million/\$10 million; higher available | \$0 to \$250,000 | Available by endorsement for qualifying firms | Yes | 8 | Yes |
| LLOYD'S OF LONDON (underwritten by Egloff Risk Management Systems) Keith A. Leeper, 818/992-5744 www.egloff.com | A | None | \$250,000/\$250,000 to more than \$20 million/\$20 million | Minimum of \$5,000 | Yes, but selection must be approved by the underwriters | Yes, tailored risk management for law firms | 30+ | No |
| NAVIGATORS PRO Mark Chiu, 212/613-4264 www.navg.com | A | Firms with up to 150 attorneys primary, up to 300 on excess | \$10 million | Minimum of \$10,000 | Option is available | No | 8 | Yes |
| NEW YORK MARINE AND GENERAL INSURANCE CO. Dirk Kruidenier, 925/680-4747, ext. 2015 www.iris-ins.com | A | No entertainment or securities work | \$2 million; higher limits with alternate carriers | \$5,000 to \$50,000 | Yes | Yes, claims hotline is free to the insured | 4 years with carrier, 20 years with program manager | Yes |
| ONEBEACON INSURANCE COMPANY Kim Pihlstrom, 312/821-4710 www.onebeaconpro.com | A | Focus on firms with 10 to 100 lawyers. No intellectual property, entertainment, securities, class action plaintiff, real estate work, or financial institutions. Excess available for larger firms | Up to \$10 million available for qualifying firms; additional claim expense can be purchased in some cases | \$5,000 to \$100,000; larger deductibles available | Available for qualifying firms | Yes | 3 | Yes |
| PILOTLEGIS, RPG (Aon is exclusive broker) Margaret Hepper, 952/656-8181 www.pilotlegis.com | Not rated | Available to general commercial, intellectual property, and insurance defense firms with 20 to 200 attorneys; membership contingent upon successful completion of risk review | Up to \$30 million | Negotiable | Yes | Yes, annual risk-management programs, on-site risk-management presentations, and periodic risk reviews | 18 | Yes |
| STATE NATIONAL INSURANCE COMPANY John Biggio, 800/982-1151 www.firstindemnity.net | A | None | \$100,000 up to \$20 million | Minimum of \$1,000 | Yes | Yes | 9 | Yes |
| THE ST. PAUL FIRE & MARINE INSURANCE COMPANY (LawyerGuard DRI program) Norman Monfort, Willis programs, 813/712-7020 www.willis.com | A | Minimum 51% defense practice required | Up to \$2 million per wrongful act | Minimum of \$5,000 per wrongful act | Yes | Yes, risk-management materials and visits may be arranged | 12 | Yes |
| TWIN CITY FIRE INSURANCE COMPANY (Hartford Company, underwritten by Target Insurance Services) Shawna Reidy, 800/692-5752, ext. 214 www.target-capital.com | A+ | No patent or class action work; 5% cap for trademark; 5% cap for SEC work; 5% cap for entertainment work; 10% cap for oil/gas/mineral work; will consider 100% plaintiff without class action; 30% cap for plaintiff and medical malpractice work | Up to \$10 million | Minimum of \$5,000 | Yes, mutual choice | Yes, confidential risk-management hotline available | 27 | Yes |
| UNDERWRITERS AT LLOYDS Michelle McCrohan, Synergy Professional Associates, 973/995-0519 www.synergy-ins.com | A | No more than 25% patent work; this program is for hard-to-place law firms. Firms with claims frequency/severity, ethics issues, and/or tough areas of practice; firms up to 25 attorneys | \$100,000/\$300,000 to \$2 million/\$4 million; higher limits available | \$5,000 | No, but requests will be considered | No | 10+ | No |
| XL INSURANCE Greg Hayden, 972/383-7152 www.xlinsurance.com | A XV | 1 to 10 lawyers for Lawyer's Protector Plan; 11+ for XL Underwriters in Dallas | Up to \$10 million | \$2,500 to \$100,000 | Yes | Yes, through San Francisco and San Diego bar associations | 9 | Yes |
| ZURICH NORTH AMERICA (California administrator) 800/848-7160 www.danielshead.com | A XV | None | Up to \$5 million | Up to \$100,000; loss-only and aggregate deductibles are optional | Yes, but carrier has final decision | Yes | 14 | Yes |