

# PROFESSIONAL LIABILITY INSURANCE

## REPORT

**A** new mandatory disclosure requirement adopted by the California Supreme Court puts the heat on practicing attorneys who don't carry professional liability insurance. As of January, uninsured lawyers must now directly inform their clients—in writing, at the time of hiring—of their lack of coverage if the representation will amount to more than four hours.

In addition, the new Rule 3-410 of the Rules of Professional Conduct requires lawyers who lose their malpractice insurance while representing a client to inform the client within 30 days of the expiration of their coverage. Exempt from the rule are attorneys

directly employed as government lawyers or in-house counsel who don't provide legal advice or represent clients outside that capacity.

The requirement will directly affect up to 30,000 lawyers practicing in the state—the approximate number of uninsured attorneys reported by the *California Bar Journal*.

Many of the State Bar's 170,000 active members loudly opposed Rule 3-410, arguing that it placed an unfair burden on sole practitioners (who accounted for 40 percent of active bar members in 2006) and on small firms of two to five lawyers (22 percent in the same year). "The law is a very contentious and adversarial environment, and this rule is a virtual invi-

tation for clients to sue their lawyers, especially those that inadvertently signal, by not offering a disclosure statement, that they're insured," says Ed Poll, a Venice-based author and law management consultant. To Poll, the high court addressed "a problem that doesn't exist with a solution that's not appropriate." Others questioned why the legal profession needed mandatory disclosure when other professions don't impose a similar requirement. Meanwhile, the State Bar has declared its intention to look for ways to make professional liability insurance affordable for all members. (The *Bar Journal* estimates that such policies generally cost a lawyer \$4,000 to \$7,000 annually.)

"The new disclosure requirement

should be good consumer protection and good for the legal profession," says Dan McKenna, program manager of CNA (listed below as Continental Casualty Company).

Keltie McCloskey, president of Cooper & McCloskey (CMI), which administers Federal Insurance Co.'s program in California, predicts, "It will result in an increase of first-time buyers of malpractice insurance, but the increased demand won't raise the price of premiums." The reason prices will hold steady: "There has been a glut of carriers and a leveling off in the price of premiums," he explains.

McKenna concurs. "New insurance carriers coming into California are forced to offer extremely low premiums as their only means of gaining any market share," he says. "Several of the well-established carriers like CNA are now

offering extremely low-priced premiums along with the new players."

Comprehensive statewide statistics on legal malpractice aren't available, but the American Bar Association's latest "Profile of Legal Malpractice Claims: 2004–2007" may suggest how malpractice trends are affecting lawyers in California as well.

According to the ABA, up to 44,000 claims were lodged against insured lawyers nationally within the study's three-year period. Solos and smaller firms were sued the most: 70 percent of all insurance claims were brought against lawyers in firms with one to five attorneys.

Nearly 22 percent of claims involved case management problems, including missed deadlines and failure to calendar properly. This is why insurance carriers usually offer substantial discounts to

practitioners with computerized calendaring systems.

Claims against plaintiffs personal injury lawyers still topped all claims at 22 percent. But real estate transaction claims rose from 16 percent in 2003 to 20 percent in 2007 as the real estate market slumped.

While more than three in four claims ended with no indemnity payments to claimants, about 15 percent of reported claims resulted in indemnity payments of \$50,000 or less and 6.5 percent led to payments of more than \$50,000. In the latter group, the number of claim payments over \$2 million more than doubled from the previous ABA survey, totaling 44 for the three-year period.

Below is an overview of carriers that provide professional liability insurance to lawyers in California.\*

\* Note: Two previously listed carriers have been removed from the chart: First Mercury Insurance, which did not respond to the survey, and Lloyd's of London, which is a brokerage firm, not an insurance provider.

Company	Best's Rating	Restrictions Based on Size/Specialty/Practice Area	Limits of Liability	Deductible	Input Allowed in Selection of Counsel?	Is There a Program to Prevent Malpractice Suits?	Years Covering CA Lawyers	Admitted in CA?
<b>ADMIRAL INSURANCE COMPANY</b> Tim Barrett 800/446-2100, ext. 577 monitorliability.com	A+	Firms with 1 or more attorneys	Up to \$5 million	Minimum of \$2,500	Yes, if provided by endorsement	Yes, risk-management/malpractice consultation and hotline	16	No
<b>ARCH INSURANCE COMPANY</b> 800/343-0132 personal-plans.com/calbar	A	None	\$100,000/\$300,000 to \$10 million	\$0 to \$50,000	Yes	Yes	8	Yes
<b>ATTORNEY PROTECTIVE</b> (Written on National Liability & Fire Insurance Co.) Sally Field, 214/220-7521 attorneyprotective.com	A++	Firms with 1 to 100 attorneys	\$100,000/\$300,000 to \$5 million/\$5 million	Varies. \$5,000 first-dollar defense on all policies before deductible applies	Yes	Yes, including newsletters, online tools, and Web seminars	1	Yes
<b>ATTORNEYS INSURANCE MUTUAL RISK RETENTION GROUP, INC. (AIMRRG)</b> James Belding, 201/460-6726 or Bruce Wilson, 203/655-1639 aimrrg.com	Not rated	Firms with 45 or more 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	24	Yes
<b>ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC. (ALAS),</b> A Risk Retention Group Nancy Montroy, 312/697-6972 alas.com	Not rated	Firms with 35 or more attorneys	Up to \$75 million per claim/\$150 million aggregate	\$175,000 per claim/\$350,000 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	31	No
<b>AXIS INSURANCE COMPANY</b> Adam D. Sharaf, 860/707-1707 axiscapital.com	A-15	Firms with 10 or more attorneys	\$5 million or less for firms with fewer than 50 attorneys; up to \$10 million with more than 50 attorneys	Minimum of \$25,000	Yes	Yes	6	Yes
<b>CAROLINA CASUALTY INSURANCE COMPANY</b> Tim Barrett, 800/446-2100, ext. 577 monitorliability.com	A+	None	Up to \$5 million	Minimum of \$1,000	Yes, if provided by endorsement	Yes, risk-management/malpractice consultation and hotline	16	Yes
<b>CONTINENTAL CASUALTY COMPANY (CNA)</b> Dan McKenna, 800/247-1403 mitchellandmitchell.com;	A	None	\$250,000/\$500,000 to \$10 million	\$5,000 to \$100,000	Yes, on an exception basis by endorsement	Yes, risk management/malpractice hotline and periodicals	26	Yes
<b>FEDERAL INSURANCE COMPANY</b> Keltie McCloskey, 415/433-9552 cmiprorisk.com	A+	Firms with 2 to 10 attorneys; no more than 70% plaintiffs work	\$5 million	\$10,000	No	Yes	26	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. The grades measure Best's opinion of the insurer's ability to meet its obligations to policyholders. See Best's website (ambest.com) for more information, such as financial size of the companies and their statutory surplus and related accounts.

■ Carrier is new to California

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<b>HARTFORD FINANCIAL SERVICES GROUP</b> Tim Marlin 212/277-0433 hfpinsurance.com	A	Firms with 1 to 200 attorneys on a primary basis; excess only for more than 200	Up to \$10 million	Depends on firm size	Yes	Yes, free risk-management hotline	28	Yes
<b>JAMES RIVER INSURANCE COMPANY</b> John Clarke, 804/289-2715 jamesriverins.com	A-	Firms with 35 or fewer attorneys; no intellectual property, class action, or securities work	Up to \$5 million on either a primary or excess basis	Varies, generally \$10,000 minimum	Yes	No formal program	6	No
<b>LAWYER'S PROTECTOR PLAN</b> (underwritten by Navigators Insurance Company) LPP Customer Service 800/336-5529 lawyers.protectorplan.com	A	Firms with 1 to 19 attorneys; each account is underwritten on its own merit	\$100,000/\$300,000 to \$5 million/\$5 million	\$1,000 to \$100,000	May be available for select firms	Yes	20+	Yes
<b>LAWYERS' MUTUAL INSURANCE COMPANY</b> Cathy Sargent, 800/252-2045, ext. 227 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 for loss-prevention and risk-management seminars; bulletins for policyholders; loss-prevention hotline	30+	Yes
<b>LIBERTY INSURANCE UNDERWRITERS</b> (member of Liberty Mutual Group) Joe Guerrero, 617/457-7638 attorneys-advantage.com	A XV	Firms with 1 to 10 attorneys	\$100,000/\$300,000 to \$10 million/\$10 million	\$0 to \$250,000	Available by endorsement for qualifying firms	Yes	2	Yes
<b>LIBERTY SURPLUS INSURANCE CORPORATION</b> ♦ (member of Liberty Mutual Group) Justin Camara, 415/983-4520 liu-usa.com	A XV	Firms with 11 or more attorneys	\$1 million to \$10 million per claim	\$25,000 to \$500,000	Subject to underwriting approval	Risk-management hotline and website	10	No
<b>NAVIGATORS INSURANCE COMPANY</b> ▼ (admitted); <b>NAVIGATORS SPECIALTY INSURANCE COMPANY</b> (Surplus Lines Company), Jerry O'Dwyer, 212/613-4350 navg.com	A	Firms with 20 to 300 attorneys	\$10 million	Minimum of \$10,000	Option is available	Toll-free hotline	9	Yes
<b>NEW YORK MARINE AND GENERAL INSURANCE COMPANY</b> Dirk Kruidenier, 925/680-4747, ext. 2015 iris-ins.com	A	No intellectual property, entertainment, or securities work	\$5 million	Up to \$100,000	Yes	Yes, free claims hotline	10	Yes
<b>ONEBEACON INSURANCE COMPANY</b> Tom Johnson, 312/821-4718 onebeaconpro.com	A XIII	Firms with 10 to 100 attorneys; excess available for firms of more than 100. No intellectual property, plaintiff class action/mass tort, entertainment, or securities work; limited coverage for plaintiff, estate, probate, trust, and financial institutions. Prefer defense-oriented litigation firms.	Up to \$10 million	\$5,000 to \$100,000; larger amounts are available	Available for qualified firms	Yes (see onebeaconlawyeringlaw.com)	4	Yes
<b>PILOTLEGIS, RPG</b> (Aon is exclusive broker) Margaret Hepper, 952/656-8181 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	19	Yes
<b>STATE NATIONAL INSURANCE COMPANY</b> John Biggio, 800/982-1151, ext. 18 firstindemnity.net	A	Firms with 1 to 300 attorneys	Up to \$10 million	Maximum of \$100,000	Yes	Yes	10	Yes
<b>TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA</b> ♦ Gary McAuliffe, 602/861-4862 travelers.com	A+	Minimum 51% defense practice required	Up to \$2 million per wrongful act	Minimum of \$5,000 per wrongful act	Yes	Yes, comprehensive risk-management program includes newsletters, hotline, website, and advisory materials	14	Yes
<b>TWIN CITY FIRE INSURANCE COMPANY</b> (Hartford Company, underwritten by Target Insurance Services) Shawna Reidy, 800/692-5752, ext. 214 target-capital.com	A XV	No patent, intellectual property, class action plaintiff work; 5% cap for SEC work; 5% cap for entertainment work (no firms doing any money management for these clients); 10% cap for oil/gas/mineral work; will consider 100% plaintiff with no class action; 30% cap for plaintiff medical malpractice work	\$5 million (can consider up to \$10 million on a case-by-case basis)	Minimum of \$5,000	Yes, mutual choice	Yes, confidential risk-management hotline	28	Yes
<b>UNDERWRITERS AT LLOYDS</b> Michele McCrohan, Synergy Professional Associates, 973/995-0519 synergy-ins.com	A XV	Firms with fewer than 15 attorneys	\$2 million/\$4 million; higher limits available	Minimum of \$5,000	Considered on a case-by-case basis	No	19	No
<b>XL INSURANCE</b> Greg Hayden, 972/383-7152 xlinsurance.com	A XV	Firms with 1 to 100 attorneys	\$100,000/\$300,000 to \$5 million	\$2,000 to \$100,000	Yes	Yes	7	Yes
<b>ZURICH NORTH AMERICA</b> Sharon Eure Burns, 212/553-5651 zurichna.com	A	None	\$100,000 per claim/\$300,000 aggregate, up to \$10 million per claim/aggregate	\$0 to \$100,000	Yes, by endorsement	No	15	Yes

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