

Last month, we brought you a primer on what you need to know about the standard lawyers professional liability policy.

This month, we seek to provide you more specific information.

One of the most common questions asked by lawyers is “What does a policy cost?” Of course, each practice is different, so that question can be answered most accurately by completing a carrier’s application and speaking with your carrier or broker.

But can we provide some ballparks to guide you? To find out, we contacted more than a dozen brokers or carriers and posed a few questions.

First, we provided four scenarios of hypothetical lawyers who were seeking a new policy. We asked the carriers and brokers to provide a premium quote for those “lawyers.”

Second, we asked the respondents to provide any other information they think lawyers should keep in mind when seeking a policy, specifically those factors that could affect their premium amount. “For instance,” we asked, “if a lawyer knew that his premium was through the roof because he listed estate law as a main area of practice, but he’s only done one estate matter in three years, he might choose to be more accurate in his information to his carrier.”

Armed with the following information, we hope you will be better equipped to have a good conversation with your carrier or broker.

On Underwriting Generally

More than one underwriter spoke with us extensively about all that goes into the underwriting decision. Lawyers in practice would benefit from a clear understanding of what carriers consider when they review an application. What follows is one description of that decision.

Numerous criteria go into the underwriting decision that the carrier must weigh before it provides you with a final premium quotation. The insurer debits or credits the law firm based on factors, such as:

- Claim history
- Firm location
- Area of practice:
 - Long tail exposure for the firm’s practice area (estate and trust work have a much longer exposure than many practices that have a two- to three-year statute of limitations time frame).
 - Practice areas that may have a higher expense related to the defense of a claim, should one occur, such as securities and intellectual property, are often debited higher than other practice groups.
 - Practices that may have a claim severity potential such as class action or mass tort work or a frequency issue such as consumer collection or bankruptcy also limit which carriers will offer coverage, and often it is debited higher with a higher deductible.
- Risk management (proper controls, docket, etc.)
- Suits for fees
- Expertise or specialty in a selected practice area

Keep these criteria in mind as you seek a policy—and as you read the following scenarios and carrier responses.

Professional Liability Policy Scenarios

Here are the four scenarios we asked carriers and brokers to consider:

- **Lawyer A:** Lawyer A is a 45-year-old man who practices solo within 10 miles of downtown Phoenix or Tucson. He has been in practice for five years and has no prior claims activity. He divides his practice evenly among family law, bankruptcy and probate. He seeks a policy with no-prior-acts coverage (coverage begins the date the policy is bound) and with limits of \$1 million per claim/\$1 million annual aggregate and a \$5,000 per claim deductible.
- **Lawyer B:** Lawyer B is a 45-year-old man who practices with three other lawyers in a shared space within 10 miles of downtown Phoenix or Tucson; they cover each others’ cases when the lawyer is unavailable for any reason. He has been in practice for five years and has no prior claims activity. He divides his practice evenly among family law, bankruptcy and probate. He seeks a policy with prior-acts coverage and with limits of \$1 million per claim/\$1 million annual aggregate and a \$5,000 per claim deductible.
- **Lawyer C:** Lawyer C is a 45-year-old woman who practices solo within 10 miles of downtown Phoenix or Tucson. She has been in practice for five years and has no prior claims activity. She divides her practice evenly among criminal law and personal injury law. She seeks a policy with no-prior-acts coverage (coverage begins the date the policy is bound) and with limits of \$1 million per claim/\$1 million annual aggregate and a \$5,000 per claim deductible.
- **Lawyer D:** Lawyer D is a 45-year-old woman who practices with three other lawyers in a shared space within 10 miles of downtown Phoenix or Tucson; they cover each others’ cases when the lawyer is unavailable for any reason. She has been in practice for five years and has no prior claims activity. She divides her practice evenly among criminal law and personal injury law. She seeks a policy with prior-acts coverage and with limits of \$1 million per claim/\$1 million annual aggregate and a \$5,000 per claim deductible.

Premium Estimates From a Few Carriers

A number of carriers provided premium estimates based on our four scenarios. Here are their projections:

	Carrier A	Carrier B	Carrier C
LAWYER A	\$2,352	\$1,458	\$1,320
LAWYER B	4,629	3,499	2,879
LAWYER C	4,720	1,215	1,475
LAWYER D	9,288	2,916	3,218

Another insurer used a different approach in responding to our scenarios. The following are its examples showing minimum and maximum premiums for a sole practitioner:

TERRITORY: PHOENIX & TUCSON

- Fully matured (practicing over 6 years—including prior acts coverage)
- One lawyer
- No claims
- Varied practice, excluding high-risk areas



- \$1 million per claim/\$1 million annual aggregate
- \$5,000 per claim deductible
 - **Minimum annual premium: \$2,590**
 - **Maximum annual premium: \$4,624**

TERRITORY: PHOENIX & TUCSON

- Retro inception (no prior acts coverage is provided, and coverage begins the date the policy is bound)
- One lawyer
- No claims
- Varied practice, excluding high-risk areas
- \$500,000 per claim/\$500,000 annual aggregate
- \$5,000 per claim deductible
 - **Minimum annual premium: \$998**
 - **Maximum annual premium: \$1,781**

TERRITORY: CITIES OUTSIDE OF PHOENIX & TUCSON

- Retro inception (no prior acts coverage is provided, and coverage begins the date the policy is bound)
- One lawyer
- No claims
- Varied practice, excluding high-risk areas
- \$500,000 per claim/\$500,000 annual aggregate
- \$5,000 per claim deductible
 - **Minimum annual premium: \$748**
 - **Maximum annual premium: \$1,336**

All of these premiums are estimates and subject to carrier review of claims history, risk management and other underwriting requirements. An accurate premium amount will only be arrived at after all the available debits and credits are considered and after review of a completed application.

Malpractice Claims by Area of Practice

We also asked carriers and brokers to identify “hot buttons” that they look for in terms of practice area.

One respondent pointed to a few areas that it scrutinizes closely: intellectual property; high-value personal injury, including medical malpractice and mass tort; and securities work. The respondent indicated that these all either result in declination or restriction in coverage or in the number of carriers that will offer coverage.

A survey published in 2005 by the American Bar Association¹ presents the number of claims reported by area of law with the relative frequency stated as a percentage.² Here are the top 10:

Area of Law	Percentage
Personal Injury—Plaintiff	19.96
Real Estate	16.46
Personal Injury—Defense	9.96
Family Law	9.58
Estate, Trust & Probate	8.63
Collection and Bankruptcy	7.92
Corporate/Business Organization	6.37
Criminal	4.19
Business Transaction/Commercial	3.18

Area of Law	Percentage
Workers' Compensation	2.27

Plaintiff P.I. leads the list, and underwriters will consider that when reviewing the areas of practice they look to insure. Interesting to note, though, is the fact that, though Plaintiff P.I. had the most claims among the surveyed carriers, its rate dropped 4.64 percentage points since the 1999 study (when it represented 24.6 percent of all claims). But Defense P.I. increased by 5.86 percentage points (from 4.10 percent to 9.96 percent of all claims).

Why is that? The ABA report notes only that “Some skeptics speculate that insurance carriers may be seeing the result of having cases defended by lower priced, less skilled defense lawyers.”

The ABA study also showed the following:

- Claims against firms with 40 or more lawyers are up 14.8 percent.
- There was a 17.66 percent decrease in the number of claims resolved in under a year, whereas the number of claims that were unresolved for more than three years increased by almost 12 percent.

Conclusion

One insurer stated well its view of the liability landscape:

When applying for malpractice insurance, keep in mind that the insurance carrier does not know you or your firm. The only level of comfort they can achieve is receiving a thoroughly completed and accurate application from a knowledgeable broker whom they respect.

The decision to shop for and then purchase lawyers professional liability insurance is a difficult one. But the lawyers and law firms that do their research, speak extensively with brokers or carriers, and take the time to complete their application thoroughly have a better chance of securing a policy that serves them and their practice well.

endnotes

1. The survey was conducted by the ABA Standing Committee on Lawyers' Professional Liability, which surveyed insurers that provide legal malpractice insurance about the number and type of legal malpractice claims received. Like similar studies the committee performed in 1985, 1995 and 1999, these surveys are not comprehensive reviews of all malpractice claims against all lawyers during a given period. Instead, they rely on self-reporting from insurers that provide legal malpractice insurance, and they only measure claims received by participating insurers.

The report shows how many claims that the insurers received from lawyers working in various practice areas and firm sizes. Of these claims, it also quantifies the types of activities lawyers performed on behalf of clients and the types of errors clients said that lawyers made. In addition, the report enumerates how claims made to participating insurers were resolved and how much insurers paid in expenses and settlements related to these claims.

The complete report is available for \$60 at www.ababooks.org (reference product code 4140041).
2. The ABA provides this data as Table 1 in its study. But it warns that the data “cannot be relied upon by underwriters in determining high and low risk practices.” This is because there is no concurrent study describing how lawyers spend their time, so there is no way to know if higher malpractice rates in certain areas of law are simply related to more time spent in those areas.