

## **HOW MUCH WILL IT COST?**

Malpractice insurance rates depend on a number of factors and vary by company. Discuss your particular circumstances with a reputable broker or with the insurance company itself in order to select the best rate for your needs. Get competitive quotes and remember, cheaper isn't necessarily better. Make sure that the insurance you're paying for really covers the activities of your practice.

The factors that determine the rates you will be charged include:

- The limit of liability selected.
- Your area of legal specialty. You can expect to pay more for coverage if you practice, for example, in high-risk areas such as securities, banking and real estate. You may even have to pay an extra premium to obtain the specific coverage you need.
- Your personal claims history. This includes all attorneys in the firm.
- The state of the insurance market. In "soft" markets, rates are lower and coverage is more available than in "hard" markets, when renewal of an existing policy may be more difficult to obtain or prohibitively expensive.
- The deductible you are willing to pay. Obviously, the higher the deductible you are willing to assume, the better the rates will be.
- Your geographic area and the litigation atmosphere in your locale. The claim experience of your risk pool (i.e., other lawyers in your geographic area). Be aware that you may experience problems, in that you may be classified in a higher or lower risk group than you actually are. For example, if you practice in a rural area, you may nevertheless be limped together with lawyers in urban areas of your state, placing you in a higher risk group. Try to find out into which risk pool you fall and, if you fall within a higher risk group than you should, do what you can to be placed in a lower risk group.
- Firm size. Some companies offer premium reductions for firms with more attorneys.
- Law office management. Some Companies may allow premium credits if the law firm has instituted malpractice prevention controls, such as an effective docket control system.

### **Underwriting**

In "underwriting" or evaluating your risk, the insurance company will look at a variety of factors based on information furnished in the application. The underwriting criteria used by insurance companies vary. The following criteria are examples.

### ***Sample Insurability Criteria***

1. Claims experience:
  - a. Number of claims or incidents per lawyer per year. (Note: Claims need not result in lawsuits to be considered relevant by an underwriter.)
  - b. Anticipated expense of these claims (both indemnity and legal defense) relative to the anticipated premium from the insured.
  - c. Nature or quality of the claim, e.g., meritorious or not, frivolous, ordinary negligence, gross negligence, or criminal conduct.
  - d. Lawyer's degree of fault, e.g., clear malpractice, statute of limitations, or vicarious liability (a lawyer who has left the firm).
2. Rejection or refusal to renew by any other carrier. (Underwriters will regard with suspicion a lawyer who is leaving a less expensive carrier.)
3. State bar disciplinary proceedings against the lawyer.
4. Lawyer's predisposition to suing clients for fees.
5. Significant increase in limits or decrease in deductible requested.
6. Nature of practice, e.g., does the lawyer participate in client investments? Does the lawyer carry on other businesses or professions?
7. Attitude and cooperation of the lawyer in resolving claims and providing necessary information to evaluate insurability; attitude with client; has the lawyer demanded coverage of an insurance company on doubtful claims?
8. Rating with Martindale-Hubbell and membership status with state and national bar associations.
9. Practice for financial institutions while also serving on the board of directors and/ or maintaining a financial interest in the institution.

### ***Sample Red Flags***

Each insurance company individually determines those situations that are considered to be outside of its standard underwriting guidelines. However, the following offer some sample "red flags" for new or renewal risks that may be submitted to the company's general manager or underwriting committee for approval:

1. Two or more claims within the past year.

2. Three or more claims within the past ten years (depending upon size or firm)
3. Major claim
4. Pattern of claims.
5. Uninsured for the immediate preceding five years.
6. Non-payment of deductible.
7. Non-cooperation of insured.
8. Any bar disciplinary proceeding.
9. Existing business relationship with a client.
10. Maintenance of other professional licenses.

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