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Professional Liability Insurance Report

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by the Staff of *California Lawyer*

Ever since California's mandatory malpractice insurance disclosure requirement took effect last year (rule 3-410 of the Rules of Professional Conduct), the estimated 30,000 or so lawyers who carry no professional liability policy have had to do some serious thinking about whether to stay uninsured.

"We've experienced a noticeable spike in demand for coverage, especially from smaller firms, ever since the disclosure-of-coverage requirement went into effect," reports **Brian Ahern**, president and CEO of **Ahern Insurance Brokerage**.

But Ed Poll, a Venice-based law-management expert and author, says many attorneys are just sitting it out. "Lawyers," says Poll, "are very clever in finding loopholes," managing "either to bury the notice so it's never brought up in conversation, or pass it off as an unnecessary requirement foisted on them by the State Bar." Poll adds that many lawyers don't earn much more than \$50,000 a year, and find the cost of malpractice insurance prohibitive. (The CALIFORNIA BAR JOURNAL figures that a basic policy costs \$4,000 to \$7,000 a year.)

Sole practitioners and small-firm attorneys may be the most vulnerable to complaints. The State Bar has no recent data, but its 2001 "Investigation and Prosecution of Disciplinary Complaints Against Attorneys in Solo Practice, Small Size Law Firms, and Large Size Law Firms" showed that more than three-quarters of the 3,255 disciplinary cases it completed the prior year involved solos, and one-fifth involved attorneys in firms with just two to ten lawyers.

Attorneys have many carriers to choose from. And although some established carriers are tightening their guidelines, Ahern says, "a lot new of ones are trying to undercut them." He cautions, however, that new carriers may lack experience and the commitment to stay in the market for the long term.

According to Dirk Kruidenier, executive vice president of BCS Insurance, law firms' increasing sophistication in avoiding malpractice liability has brought a downward trend in claim frequency. Pricing, he says, has bottomed out. "Some of our lower-priced competitors are now making price increases," he says. "But each underwriter has a different appetite for risk."

All in all, Ahern says, it's still a good market for acquiring coverage.