

Member Login

- [ABA Home](#)
- [Join](#)
- [Web Store](#)
- [About the ABA](#)

- [Journal Home](#)
- [Classified Ads](#)
- [Contact Us](#)
- [FAQ](#)
- [Advertise With Us](#)
- [Subscribe to Magazine](#)
- [Subscribe to eReport](#)
- [Subscribe to Mobile Edition](#)
- [Ross Essay Contest](#)
- [ABA Notices](#)

American Bar Association

Defending Liberty, Pursuing Justice



Search:

[Advanced Search](#)
[Topics A-Z](#)

• [Print This](#) | [E-mail This](#)

ABAJOURNAL.COM

THURSDAY, APRIL 5, 2007

FROM THE APRIL *ABA Journal*
 SPECIAL EDITORIAL SECTION



(Also see [Slaying Student Debt](#) and [Retiring in Style.](#))

Risks and Rewards

Save on professional liability insurance by shopping around and using smart management practices

By Jill Schachner Chanen

Frustrated by the cost of his lawyers' professional liability insurance, Seattle lawyer Marc Stern decided to take matters into his own hands.

Stern had always used an insurance broker to help him with his professional liability insurance needs, but he was skeptical about whether he was getting the best value for his dollar, considering his clean claims record.

So last year Stern, a solo practitioner, undertook his own search for a new lawyers' professional liability insurance provider. Much to his delight—and with less effort than he expected—Stern found an insurer offering better coverage for less money.

Much less. According to Stern, his annual premium dropped by nearly a third, to \$2,600 from \$3,600.

Was Stern just lucky? Not really, according to market

Want more timely stories about the issues affecting lawyers & the justice system?

ABAJOURNAL
 eREPORT

Click here to sign up for this FREE member benefit!



observers. In today's increasingly competitive lawyers' professional liability in-surance market, Stern just may have played a winning hand that allowed him to parlay his insurance dollars into better, cheaper coverage for his bank-rupt-cy practice.

UNDERSTANDING UNDERWRITING

While the lawyers' professional liability market tightened dramatically 10 years ago, the tide has again turned in favor of the consumer. An influx of new car-riers servicing lawyers, along with an expansion of in-surance lines by existing carriers, has made the lawyers' liability insurance market more competitive, says Gerald Merritt of Monmouth Junction, N.J., vice president of underwriting for insurer CNA's professional liability lines for accountants and lawyers.

Five Tips to Take to the Bank

When it comes to money-saving advice, underwriters say these actions can really pay off:

1. If you are a solo, make sure you have a backup lawyer in place. Your backup plan can save you up to 11 percent annually.
2. Designate an in-house ethics and malpractice counsel for the firm.
3. Attend insurer-sponsored risk management seminars. This can result in an automatic discount on your premiums.
4. Do your homework. Research a prospective client before taking on a matter. If the prospect is litigious, you probably won't be spared.
5. Look for the best total value from an insurer, not just the best price.

As a result, lawyers may find the time is ripe to save money. But just how much money any one lawyer or law

firm may save is hard to say because underwriting factors often are affected by office locations, practice areas and claims histories, says Boston professional liability insurance broker Andrew Biggio of First Indem-nity Insurance Group. So while one lawyer may pay \$1,600 annually for a \$1 million policy, another may pay as much as \$7,100 for the same thing.

Partners at Crowell & Moring have found an extra \$500,000 in their coffers every year since 2001 after the firm changed its insurer of 20 years, says Barry Cohen, a Washington, D. C.-based partner who also serves as the firm's ethics counsel.

Like other large firms with international offices, Crowell & Moring cannot find malpractice insurance on the open market like a solo or smaller firm can. In-stead, the firm relies on brokers to package their high liability limits among a handful of insurers.



MARC STERN

PHOTOGRAPH BY KEVIN CRUFF

Because premium payments account for close to 2 per-cent of the firm's overhead, its managers have made a point of paying close attention to the costs. Cohen says his firm left its longtime insurer after a new broker courted them with a package actually offering millions of dollars in savings.

Is shopping around always the solution? That depends, according to the experts.

While switching malpractice insurance carriers can result in lower premiums, it may also present risks. Law firms would be wise to weigh any potential savings achieved by switching carriers against those risks, Merritt says.

"It's the consumer's choice, but when you make those decisions it is very, very important to understand what product you are leaving and what product you are going to," he says.

Gerard Guterl, managing director of Aon Risk Service's professional services group in New York City, tells his law firm clients to shop around every three years, but he cautions against quick moves.

"To the extent that there is a better offer, we typically recommend that they go back to their incumbent and see if they can do better," he says. He believes there is little benefit in changing carriers for less than 15 percent savings.

San Diego attorney Heather Rosing, a partner at Klinedinst, recommends getting at least four quotes to make sure rates are competitive. But, like Guterl, she says attorneys should stop and think before they take on the risk of changing insurance carriers.

What are those risks? A lower-quality insurer, for one thing, according to Rosing. She advises doing a little research to learn more about the financial stability of any prospective insurer before switching. Ratings companies like A.M. Best can provide a wealth of information on this issue.

Type of coverage is equally if not more important than the stability of the insurer. Merritt strongly cautions lawyers to make sure that they are getting "apples to apples" coverage. There can be critical differences between policies in coverage for prior acts as well as deductibles and policy limits, he says.

It's also crucial to read the fine print. Rosing, who represents lawyers in malpractice claims and also manages her firm's malpractice policy, says lawyers might not care up front about details such as whether their policy covers ethics charges, or allows them to choose their own defense counsel and have a decision in settlements. But they certainly will wish they had taken the time to read the policy if they ever need it.

LAYING THE GROUNDWORK FOR SAVINGS

Having good risk-management policies can be an equally effective way to lower costs or at least keep a cap on them.

While rates usually are set based on a variety of underwriting factors including location, practice areas and claims history, firms can make themselves look better—or worse—to underwriters through their risk

management practices, Biggio says.

One key area of concern for underwriters is conflict-checking systems. Conflicts pose one of the most significant risks for larger firms, says Cohen. But solo and small-firm practitioners often have problems in this area because they rely on memory instead of auto-mated procedures.

Invest in automated conflict-checking systems and docketing systems and use them, underwriters urge—it reduces risk and therefore may help lower premiums.

Automated conflict-checking and docketing systems go hand in hand with good client intake practices. Underwriters are increasingly looking at what types of systems firms have in place to make sure they are investigating potential clients before representing them.

Doug Richmond, senior vice president for risk management and loss prevention at Aon, sees more firms making client background checks a formal step in their intake process. Doing so, he says, helps make a firm look like a better risk to underwriters.

Rosing also encourages firms to regularly use carefully worded fee agreements. If structured correctly, she says, such fee agreements can have the effect of reducing claims because they limit the scope of the engagement.

These fee agreements should also be used in conjunction with good collection practices so that lawyers do not reach the point of suing a client over fees. This is important because insurers say the single biggest reason for a malpractice claim is a counterclaim to a fee suit. “Don’t let clients get behind on their bills,” Rosing says.

A general awareness of risk management also matters, underwriters say. Lawyers can show their commitment to risk management by regularly attending seminars on the topic or even devoting a senior lawyer’s time to it.

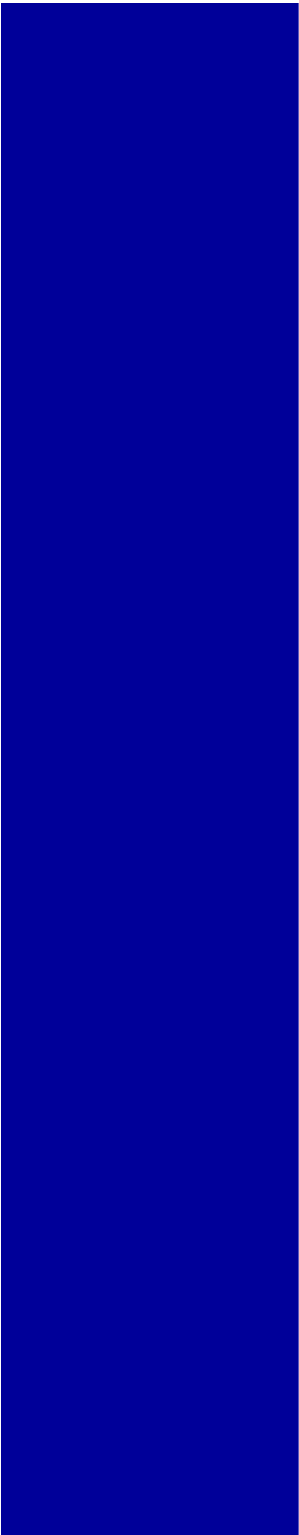
While underwriters take note of these types of actions, Richmond says firms often struggle with whether the benefits of creating such nonbillable responsibility is worth the lost billable time.

“It’s tough to assign any kind of dollar figure to in-house loss prevention because you can’t assign a value to a firm’s reputation,” he says.

While the decision is ultimately up to the firm, “a loss does not have to be catastrophic to be a huge loss to reputation,” he says.

Jill Schachner Chanen, a lawyer, is a legal affairs writer for the ABA Journal. Her e-mail address is chanenj@staff.abanet.org.

©2007 ABA Journal



[Back to Top](#)

[Topics A-Z](#) [Web Store](#) [ABA Calendar](#) [Contact ABA](#)



American Bar Association | 321 N. Clark St. | Chicago, IL 60610 | 800.285.2221
[ABA Copyright Statement](#) [ABA Privacy Statement](#) [Web Site Feedback](#)