Underwriting and Claim Trends in Lawyers’ Professional Liability Insurance

Ashley Culin, President, ProLawyer Insurance, LLC
Jennifer Faas, Consulting Director, CNA
Matthew Marrone, Partner, Goldberg Segalla LLP
## Practice Areas Generating Largest Number of LPL Claims*

<table>
<thead>
<tr>
<th>Area of Practice</th>
<th>Responses (by percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust and Estate</td>
<td>56</td>
</tr>
<tr>
<td>Corporate &amp; Securities</td>
<td>56</td>
</tr>
<tr>
<td>Business Transactions/Commercial Law</td>
<td>56</td>
</tr>
<tr>
<td>Real Estate</td>
<td>67</td>
</tr>
<tr>
<td>Collection &amp; Bankruptcy</td>
<td>22</td>
</tr>
<tr>
<td>General Litigation</td>
<td>11</td>
</tr>
<tr>
<td>Taxation</td>
<td>0</td>
</tr>
<tr>
<td>Personal Injury Plaintiff</td>
<td>11</td>
</tr>
<tr>
<td>IP</td>
<td>0</td>
</tr>
<tr>
<td>Family Law</td>
<td>0</td>
</tr>
<tr>
<td>Litigation Defense</td>
<td>0</td>
</tr>
</tbody>
</table>

*Note: Survey participants provided multiple responses, so the totals sum above 100 percent. The survey also inquired about LPL claim activity in several other practice areas but received no responses in each of the past seven years. These areas include: Labor & Employment, Insurance Defense, Criminal/White Collar, International Law, and Personal Injury Defense.
First and second most frequently alleged malpractice errors

<table>
<thead>
<tr>
<th>Alleged Error</th>
<th>First</th>
<th>Second</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflicts of interest</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Procedural error</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Failure to file timely</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Clerical error</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Other/General Negligence</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Fraud</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td><em>Inadequate discovery or discovery sanctions</em></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Failure to calendar /Follow-up</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Choice of Law</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

Number of insurers
### Year-Over-Year, Conflicts Remain Top Cause Of Claims

**PERCENTAGE OF INSURERS SURVEYED CITING CONFLICTS AS 1\textsuperscript{st} OR 2\textsuperscript{nd} LEADING CAUSE OF MALPRACTICE CLAIMS [2011-2018]**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>1\textsuperscript{st} CAUSE</th>
<th>2\textsuperscript{nd} CAUSE</th>
<th>TOTAL (1\textsuperscript{st} &amp; 2\textsuperscript{nd} CAUSES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>56</td>
<td>22</td>
<td>78</td>
</tr>
<tr>
<td>2017</td>
<td>44</td>
<td>44</td>
<td>89</td>
</tr>
<tr>
<td>2016</td>
<td>56</td>
<td>11</td>
<td>67</td>
</tr>
<tr>
<td>2015</td>
<td>67</td>
<td>0</td>
<td>67</td>
</tr>
<tr>
<td>2014</td>
<td>75</td>
<td>13</td>
<td>88</td>
</tr>
<tr>
<td>2013</td>
<td>57</td>
<td>14</td>
<td>71</td>
</tr>
<tr>
<td>2012</td>
<td>67</td>
<td>17</td>
<td>83</td>
</tr>
<tr>
<td>2011</td>
<td>50</td>
<td>33</td>
<td>83</td>
</tr>
</tbody>
</table>
LPL Claim Trends

- Areas of practice: trust/estate, transactional
  - Are carriers avoiding any areas of practice from an underwriting standpoint?
- Conflicts of interest: actual or alleged
  - Are conflict waivers important or useful?
- Claims by “non-clients”
  - Importance of engagement letters
LPL Underwriting Trends

• Shorter applications
  • Does the carrier really know the risk it is insuring?
• Cyber coverage
  • Do the insured lawyers and their agents really understand the exposures and coverages?
• Changes in the marketplace
  • New entrants and notable exits
Spotlight

Prescribed Pets
Inside the complex legal landscape of reasonable accommodation requests for emotional support animals

The GDPR Is Coming
A primer on avoiding the risk of costly penalties

Fidelity/Crime Policies
Does “direct” actually mean “direct”?  

Top 5
Ways to avoid legal malpractice

GOLDBERG SEGALLA
Attorney advertising.
HOW DO YOU STAY AHEAD? FOLLOW THE LEADER.

Goldberg Segalla’s Professional Liability Practice Group leads the way for analysis and discussion of the trends, decisions, and breaking news impacting the management and professional liability community nationwide.

SUBSCRIBE TO STAY AHEAD:
professionalliabilitymatters.com/subscribe
BLOG | NEWSLETTER | EMAIL ALERTS

JONATHAN S. ZISS
Chair, Professional Liability Practice Group
267.519.6820
jziss@goldbergsegalla.com

MATTHEW S. MARRONE
Partner
267.519.6851
mmarrone@goldbergsegalla.com

PETER J. BIGING
Vice Chair, Professional Liability Practice Group
646.292.8711
pbiging@goldbergsegalla.com
# Insight

**The European Union's General Data Protection Regulation:**
A Brief Primer
Think American-based companies can rest easy for the time being until regulation is enacted stateside? Think again. The GDPR's territorial reach is not limited — and penalties can be colossal.

Does "Direct" Actually Mean "Direct" in Fidelity/Crime Policies?
While some jurisdictions take an "I know it when I see it" approach, others apply a tort theory of "proximate cause." The difference directly impacts how policy language is interpreted and applied to various claims.

# Spotlight

**Prescribed Pets**
The challenges facing New York housing communities reflect the complex, unpredictable, and evolving legal landscape surrounding reasonable accommodation requests for emotional support animals.

# Top 5

**Top 5 Ways to Avoid Legal Malpractice**
Preventing legal malpractice can't be taught in five easy steps. It must be learned and practiced over the course of a career. But there are a handful of issues that rear their heads most frequently in legal malpractice claims. Be aware of them, and take steps to avoid them.

# Case Notes

**Federal Court Allows EMTALA Claims to Proceed Against Hospital**

**Termination of School Teacher's Employment Upheld**
*In the Matter of Berkley v. New York City Dept. of Educ., et al.*
Top 5 Ways to Avoid Legal Malpractice

By Matthew S. Marrone

It is an unfortunate reality for a great deal of lawyers that malpractice claims have simply become part of the “cost of doing business,” and regardless of the steps that some lawyers take, they may still end up as a defendant in a legal malpractice claim. But following the guidance below should reduce — and hopefully eliminate — the threat of malpractice claims for many lawyers.

1. Don’t “Dabble”
Many lawyers have gotten themselves into situations where they have stepped far outside their normal practice areas in order to accept a new matter or accommodate a client, and that can easily lead to malpractice claims. Don’t be afraid to specialize, and don’t be afraid to refer clients to other lawyers.

2. Avoid the Problem Client
“Problem clients” (i.e., clients who expect favors, complain excessively or unreasonably, have unreasonable expectations, or don’t pay) increase your risk of malpractice claims in two ways: 1) they frequently get themselves involved in difficult situations more likely to result in adverse consequences; and 2) they are more willing to blame you when something goes wrong. If you can avoid them at the outset or part ways with them once they become difficult, you will certainly reduce your exposure to malpractice claims.

3. Define the Scope of the Relationship
Perhaps the easiest way to establish certainty in the attorney-client relationship is to use an engagement letter. It should define who the attorney represents and the scope of the engagement. When appropriate, it is also a good idea to specify who the attorney does not represent, and what she will not be handling. Doing this will set client expectations and protect the attorney.

4. Comply With Deadlines
Calendaring errors remain a leading cause of malpractice claims. Common mistakes include data entry errors, failing to use file review dates, absence of a back-up calendar, and procrastinating until the last minute to file documents. To avoid this trap, an office should have at its organizational core an office-wide calendar and practices in place regarding its use.

5. Avoid Conflicts of Interest
It is crucial that each firm establish stringent procedures for early identification and resolution of the broad variety of situations in which unexpected conflicts may arise. Lawyers should be particularly cautious when asked to represent two parties, become personally involved in a client’s business interests, serve as an officer of a client’s company, or deal with unrepresented parties.
This two-hour program will analyze insurance underwriting and claim trends in the allied healthcare and lawyers’ professional liability lines of business, with one hour devoted to each. Panels of experts in each segment will examine issues currently relevant to the underwriting of insurance for lawyers and allied healthcare professionals, claims asserted against them, and legal issues impacting their defense.

Afterwards, Celebrate the Season with your PLUS colleagues! Enjoy cocktails and hors d’oeuvres immediately following the program.

Tuesday, December 3, 2019
4:00 p.m. Registration/Check-in
4:30-6:30 p.m. Seminar
6:30-8:00 p.m. Annual Holiday Social

The Ritz Carlton
10 Avenue of the Arts
Philadelphia, PA 19102
Thank You 2019 Annual Sponsors

---

**Platinum Sponsors**

- CARR MALONEY PC
- RLI
- WARD LAW, LLC

---

**Gold Sponsors**

- Marshall Dennehey Warner Coleman & Goggin
- Philadelphia Insurance Companies
- Travelers
- USLI
- Wilson Elser

---

**Silver Sponsor**

- Business Risk Partners