

Ames & Gough  
8300 Greensboro Drive, Suite #980  
McLean, VA 22102

## News Release

### LAW FIRMS FACE RISING NUMBER OF MALPRACTICE CLAIMS

#### Ames & Gough Survey of Leading Insurers Cites Recession, Real Estate Slump as Culprits

*For further information, contact:  
Dan Knise, 703-827-2277, or  
Al Modugno, 917-414-4569*

**WASHINGTON, DC**, June 28, 2011 – The recent economic recession and prolonged real estate market slump are triggering a rise in the number of malpractice or professional liability claims lodged against law firms this year. A new study by insurance broker Ames & Gough finds lawyers’ professional liability claim levels up in 2011 by as much as 20 percent at some of the leading insurance companies providing coverage for this exposure.

Ames & Gough examined the trend by polling six insurance companies that on a combined basis work with almost 75 percent of large and midsized U.S. law firms. Three of the insurers indicated their claims are up by 6 – 10 percent this year and one saw an increase of 11 – 20 percent. Claim levels are flat at the two other insurers participating in the survey.

Eileen Garczynski, a vice president at Ames & Gough, said, “As law firm clients see their financial circumstances worsen, they’re more likely to seek redress from their advisers. If lawyers representing a client are not careful during the initial representation, they may well become targets for a malpractice claim when the client’s financials spiral downward.”

The insurers identified “real estate” as the practice area generating the largest percentage increase in new claims, followed by “corporate & securities” work, and “trusts & estates.”

Ames & Gough cited two key drivers for the rise in real estate-related legal malpractice claims: one, being the sheer increase in transactions from 2005 – 2008, bringing with them more closings and increased risk of errors. The second, plummeting property values, compounds this situation, as buyers and lenders look to the parties involved in the transactions to lay blame and seek to recoup their losses.

“The good news,” noted Ms. Garczynski, “is that many economists now anticipate the bottoming of the real estate market. The worst may be behind us, so we might see real estate-related claims level off or actually start to drop.”

On the flip side, however, the survey found a significant uptick in the number of claims with reserves over \$500,000 (including loss and expense). Three insurers saw an 11 – 20 percent increase in these claims this year and two pegged their growth at 6 – 10 percent.

There's also a rise in multi-million dollar claim payments. Five of the six insurers surveyed were involved in paying a claim of \$50 million or more. And while multiple insurers may participate on the same claim(s) given quota share coverage arrangements and excess limits, the share of claims resulting in multi-million dollar payouts clearly has been growing.

What issues generate the most claims? The survey found "conflict of interest" to be the single largest cause of claims, followed by "failure to file timely."

"Attorneys have an affirmative duty to identify and address conflicts of interest," said Ms. Garczynski. "The best way to address this potential issue is to screen new clients carefully, seek advance waivers where appropriate, and clarify who the client is for any given matter."

According to Ames & Gough, with both the frequency and severity of lawyers' professional liability claims on the rise, law firms need an effective process for identifying and reporting claims to their malpractice insurer.

"Law firms should set aside concerns that reporting a claim might affect the availability or pricing of their malpractice insurance," Ms. Garczynski advised. "Instead, they need to recognize that early intervention often enhances the ability to defend a claim."

The insurers participating in the Ames & Gough survey were: AXIS, Beazley, Berkley Select, CNA, Lexington, and Hartford. Copies of the survey, *Lawyers' Professional Liability Claims Trends: 2011*, may be obtained free of charge by emailing requests to:

[info@amesgough.com](mailto:info@amesgough.com). Those requesting the survey should include their name, title, affiliation, and phone number, and state "LPL Claims Survey" in the subject line.

# # #

### **About Ames & Gough**

Ames & Gough, founded in 1991, has established itself as a committed, superior resource for law firms, design professionals, and other consulting firms and professional organizations in need of professional liability insurance and risk management assistance. In recent years, the firm has expanded its capabilities to include management liability, employment practices liability, kidnap & ransom and related insurances; as well as more typical property and casualty insurances. The firm has offices in Boston, Philadelphia, and Washington, DC. Visit the Ames & Gough Website at [www.amesgough.com](http://www.amesgough.com).