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## News Release

### **COSTS RISE AS U.S. LEGAL MALPRACTICE CLAIMS BECOME MORE COMPLEX**

#### **Lawyers' Professional Liability Insurers See Surge in Claim Severity, Uptick in Frequency**

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**WASHINGTON, DC**, May 30, 2019 – As law firms across the U.S. navigate a difficult environment where they are pressured to do more with less and endure greater scrutiny from corporate clients over their fee structure, deliverables and performance, many also are dealing with a growing number of multimillion dollar legal malpractice claims and their potential impact on their business and reputation, according to a new study by insurance broker Ames & Gough.

In its ninth annual survey of lawyers' professional liability claims, Ames & Gough examined the trend by polling 11 of the leading lawyers' professional liability insurance companies that on a combined basis provide insurance to approximately 80 percent of the Am Law 200 firms. The survey found the number of claims resulting in larger multimillion dollar payouts – as well as the dollar amounts involved – has surged in the past year; 2018 became the first year ever in which the majority of insurers surveyed had a claim payout of over \$150 million. Furthermore, at least two settlements exceeded \$250 million.

Today, the greater complexity of matters and the higher costs to defend malpractice claims, including rising attorneys' fees and e-discovery costs, are part of what's driving the alarming increase in claim severity," said Eileen Garczynski, senior vice president and partner, Ames & Gough. "It's also clear the landscape for law firms is shifting; clients are now much more willing to point fingers at lawyers to seek financial redress when outcomes don't meet their expectations."

**Conflicts remain the biggest malpractice error.** Year after year, the insurers surveyed have singled out conflict of interest (including perceived conflicts) as the most common alleged legal malpractice error. This year, seven of the 11 insurers surveyed cited conflicts either as the first or second leading cause of legal malpractice claims.

Conflicts are especially problematic as more law firms seize opportunities for growth and expansion either through mergers or by bringing in lateral hires. According to the survey, there are times when a lawyer who changed firms can contaminate the new firm with what he or she learned at the old firm.

“To get control of this risk more firms are centralizing their conflicts of interest screening and managing the client intake process,” Ms. Garczynski noted. “While that’s a step in the right direction, law firms still need to do a better job of flagging potential conflicts early and training their legal professionals on this issue. Firms unsure of how to properly screen a lawyer might consider working with an attorney who specializes in professional responsibility.”

As in prior years, the current survey found the largest number of claims stemming from four practice areas: Business Transactions (cited by 63 percent of insurers surveyed), Trust and Estates (55 percent), Corporate & Securities (45 percent), and Real Estate (45 percent).

Attorneys involved in business transactions provide advice on how to structure a business, evaluate new ventures, and buy or sell a business. According to the survey, related malpractice claims are almost always made after the transaction is concluded, when hindsight is perfect. In addition, many attorneys handling business transaction matters often wander outside their area of expertise, as certain elements may appear quite different as the matter progresses. Unfortunately, this can quickly lead to malpractice claims.

“To reduce the risk of straying outside their expertise, engagement agreements should clearly define the role of the attorney for a particular matter – and the attorney should stick to that role,” Ms. Garczynski emphasized. “Attorneys need to know when they may be getting into areas outside the scope of the agreement and continuously document in writing the aspects of the matter they are working on.”

Meanwhile, trust and estates, another practice area experiencing rapid growth, is also seeing more claims. Lawyers performing estate, trust, and probate work have become increasingly vulnerable to malpractice claims as more “Baby Boomers” retire and heirs and beneficiaries dispute over estates. These actions often target attorneys for mis-drafting estate planning documents, failing to appreciate tax consequences, erring in representing their clients during litigation, or failing to act in an acceptable fiduciary capacity over estates and trusts.

“While it’s impossible to completely eliminate exposure to these types of claims, taking steps to be more careful and communicative can help,” said Garczynski. “Effective communication starts with the retainer agreement or engagement letter that clearly states whom the attorney does and does not represent and who can speak for the client. And it continues throughout the entire representation until its termination.”

**Spike in costs to defend malpractice claims.** Among the insurers surveyed, 10 of 11 indicated defense costs increased in 2018 over the prior year. Two indicated the average cost to defend a claim exceeded \$500,000; three stated their average defense costs were between

\$100,000 and \$500,000, and the remaining six insurers all had an average cost between \$50,000 - \$100,000.

At the same time, the rates insurers are paying defense counsel are continuing to rise. Among insurers surveyed, 63 percent saw an increase in rates paid to defense counsel during the past year with four reporting an increase of 2-5 percent and three, up to 2 percent.

The insurers participating in the Ames & Gough survey were: AXA XL, AXIS, Brit, CNA, Crum & Forster, Huntersure, Liberty, Markel, Sompo, Swiss Re, and Travelers. Copies of the survey, *Law Firms Wrestle with Higher Malpractice Claim Severity, Costs, Uptick in Frequency*, 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 2019" in the subject line.

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### **About Ames & Gough**

Ames & Gough, founded in 1992, has established itself as a committed, superior resource for law firms, design professionals, and other consulting firms and professional organizations and associations 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, cyber/network security and related insurances; as well as more typical property and casualty insurances. The firm has offices in Boston, New York, Philadelphia, and Washington, DC. Visit the Ames & Gough website at <http://www.amesgough.com/>.