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News Release

LEGAL MALPRACTICE CLAIMS STABILIZE, BUT REMAIN ABOVE PRE-RECESSION LEVELS

Ames & Gough Survey Finds Costs to Defend Claims Continue to Rise

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WASHINGTON, DC, June 28, 2017 – The number of new malpractice claims brought against law firms is stabilizing, but remains well above historical experience in years preceding the 2007 - 2009 recession. A new study by insurance broker Ames & Gough finds most leading legal malpractice insurers saw their claims level off in 2016 as the cost to defend claims continued to escalate.

In its seventh annual survey of lawyers' professional liability claims, Ames & Gough examined the trend by polling nine of the leading lawyers' professional liability insurance companies that on a combined basis provide insurance to approximately 80 percent of the Am Law 100 firms.

Claim severity high. In 2016, all nine insurers surveyed had claims with reserves over \$500,000. For the third consecutive year, six of the insurers reported having 21 or more such claims. And in the past two years, the same number participated in paying a claim of \$50 million or more, including one with a claim exceeding \$100 million.

Conflicts trigger most claims. In every year the survey has been conducted, insurers have cited conflicts of interest (including *perceived* conflicts) as the most common alleged legal malpractice error. This year was no exception; eight of the nine insurers surveyed cited conflicts as the first or second biggest leading cause of legal malpractice claims.

“As the legal landscape changes through mergers, acquisitions and lateral hiring, firms run the risk of increased conflicts,” said Eileen Garczynski, senior vice president and partner, Ames & Gough. “Too often, conflicts are an afterthought when attorneys move from firm to firm; and even when conflicts surface they are often ignored or overlooked. And that’s when they become costly.”

Notably, nearly half the insurers polled cited an uptick in claims from lateral hires. Half of these firms traced the claims to law firms not adequately resolving a conflict of interest. One insurer pointed to a lateral hire or “merged” attorney not being trained or supervised properly,

and another to the attorney continuing to work for a client of their prior firm that was not a client at their new firm.

“It pays to be smart about the hiring process altogether and extra cautious in deciding whether to bring in an attorney whose conflicts might result in disqualification of the firm,” Ms. Garczynski said. “Consider only hiring laterals known to one or more of the firm’s partners and check for conflicts early on by insisting that laterals fully disclose potential issues.”

Cyber events trigger more malpractice claims. Five of the nine insurers polled saw more cyber-related legal malpractice claims this year than in prior years. Of those, four indicated most of the claims involved hackers.

“With cyber threats widespread, many law firms are actively sharing best practices for cyber security and evaluating cyber/network security insurance,” said Ms. Garczynski. “Besides providing key coverages not included in the typical lawyers’ professional liability Insurance policy, cyber-liability insurance policies tailored to law firms can be structured to protect the firm’s professional liability policy limits.”

Among individual practice areas, insurers participating in the survey cited business transactions as the source of most legal malpractice claims for the second consecutive year, followed by corporate & securities, and trusts and estates.

Along with the large volume of company mergers and acquisitions, the causes of business transactions claims tend to center around improper preparation, filing and/or transmittal of documents; failure to provide appropriate legal advice; and conflicts.

Meanwhile, the large number of claims stemming from corporate and securities work and trusts and estates is also consistent with findings from previous years.

Rising costs to defend claims. This year, the nine insurers surveyed unanimously experienced an increase in the cost to defend legal malpractice claims. Eight insurers indicated the average costs to defend a typical malpractice claim exceed \$50,000; three saw costs between \$100,000 and \$500,000, and two indicated average costs are more than \$500,000. Claim complexity and e-discovery are two clear drivers of this trend.

Along with the increased cost to defend legal malpractice claims, the hourly rates insurers pay defense counsel also rose again. Six of the nine insurers saw these rates rise by up to 2 percent. Four saw rates increase between 2 - 5 percent, and one insurer saw rates increase by more than 5 percent.

While rates vary by location and due to other factors, the typical average rate insurers pay defense counsel continues to increase. Five of the nine insurers polled pay hourly rates between \$200 - \$300. Two others pay between \$300 - \$500, and two pay, on average, more than \$550 per hour.

The insurers participating in the Ames & Gough survey were: AXIS, BRIT, CNA, Catlin, Huntersure, Ironshore, Markel, Swiss Re Corporate Solutions and QBE. Copies of the survey, *Lawyers' Professional Liability Claims Trends: 2017*, may be obtained free of charge by emailing requests to: info@amesgough.com. Those requesting the survey should include their name, title, affiliation, and phone number, and state "LPL Claims Survey 2017" 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, kidnap & ransom 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 www.amesgough.com.