RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

Professional Liability Claims Rising in Number and Severity

Real Estate Claims Rank Highest

The recession and real estate market woes are the driving forces behind an increase in law firm malpractice claims, according to a survey released in July.

The survey of senior claims examiners responsible for lawyers' professional liability claims was conducted by specialty insurance brokerage Ames & Gough this spring. The insurers represented – AXIS, Beazley, Berkley Select, CNA, Lexington and Hartford – work with nearly 75 percent of the mid-sized to large law firms in the country.

Four of the insurers reported an increase in the number of number of malpractice claims filed in 2011 compared to 2010. Real estate, corporate & securities and trusts & estates are the dominant practice areas, with real estate-related claims ranked as the top area of activity by four of the insurers. The huge volume of real estate activity in 2005-2008, along with the economic downturn that caused property values to plummet, contributed to the increase. As the study notes, many predict the worst of the real estate plunge may be behind us, so claims may decrease rather than continue to rise.

In addition to the increase in volume, five of the six insurers reported an increase in large claims with reserves over $500,000, with an accompanying escalation of the costs of defending such claims. Five insurers reported they were involved in paying a claim of $50 million or more.

Conflict of interest was reported as one of the top two most common causes of claims by five of the insurers, followed by "failure to file timely." In terms of handling claims, four of the insurers surveyed reported using a formal panel counsel, including one that has over 100 firms on its panel list.

Given the number and the severity of claims, law firms must be proactive and vigilant in managing their risk management. The Ames & Gough study concludes with the recommendations that firms:

- Educate attorneys on policies for reporting claims and circumstances.
- Foster a culture that encourages an early and open discussion of potential problems.
- Implement a clear system, led by a central coordinator, for reporting claims and circumstances.
- Ask all staff about any knowledge of claims or circumstances during the annual insurance renewal process.
- Maintain professional liability policies in a central file with clear instructions on how to report a claim.

As Eileen Garczynski, Esq., Vice President of Ames & Gough notes, "In these volatile times you need to be prepared to protect your firm from the unexpected. Having a well thought out and effectively communicated malpractice insurance program is a critical element in your business plan."

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