

PROFESSIONAL COUNSEL[®]

ADVICE AND INSIGHT INTO THE PRACTICE OF LAW®

Business Transactions - Professional Liability Fact Sheet

Description of practice area

 Business Transactions/Commercial Law: Includes sales agreements, agency agreements, entertainment contracts, commercial transactions including financing where real estate is not the major subject.

Business Transactions/Commercial Law does NOT include:

Corporate and Business Organization: Includes all aspects of the formation, operation, sale and dissolution of corporations, partnerships (general and limited), agency and other forms of business organizations. It includes matters related to Sarbanes-Oxley and other corporate governance obligations. It does not include business transactions such as sales, employment agreements and commercial transactions that are covered by the category Business Transactions/Commercial Law.

Source: ABA Profile of Legal Malpractice, 2011

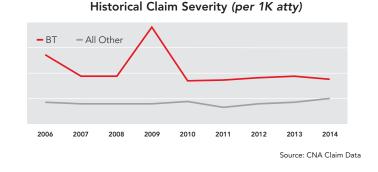
Quick Stats

- 190-Approximate number of reported Business Transactions claims per year.
- \$12.65 million Average yearly cost (indemnity and defense) of Business Transactions claims per year for the last 5 years.
- \$140,000-Average per claim cost for a BT claim.
- 24%-Share of firms (with 34 or fewer attorneys) written by CNA that report doing Business Transactions work as part of their practice.
- \$120 million Approximate amount paid by CNA for BT claims losses over a ten year period.

Source: CNA Claim Data 2006-2014

Severity of Business Transactions Claims

Claims severity for the Business Transactions practice area at CNA surged during the economic downturn of 2008, peaking in 2009. Today, claims severity for Business Transactions remains markedly higher than all other AOPs.



Top Causes of Business Transactions Claims

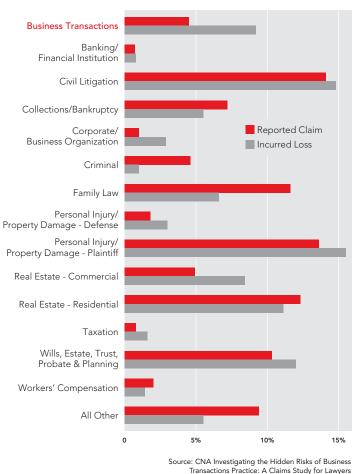
- Improperly Drawn/Recorded Documents
- Conflicts of Interest
- Failure to Know/Properly Apply the Law
- Fraud
- Improper Handling or Disbursement of Funds

Source: CNA Claim Data

Nearly 70% of all business transactions claims are instituted against attorneys who reported that business transactions practice generated 5% or less of their annual revenues.

Reported Claims v. Incurred Losses 2006-2014

Historically, the claim experience in the CNA Lawyers Professional Liability Program has demonstrated that an AOP generates a similar percentage of reported claims and incurred losses. However, in BT practice, the percentage of incurred losses is more than twice the percentage of reported claims in the program as a whole.



Claims v. Losses

Red Flag Representations

- Client is more experienced than the attorney in the industry or to type of transactions.
- Client is a possible "bad actor" engaging in fraud in connection with the underlying transaction.
- Representing ALL PARTIES in a BT matter.
- Representing established client in transaction with unrepresented parties.
- Acting as only "scrivener" to transaction negotiated by parties.

Opportunities for Risk Management

- Refer to CNA's BT Claim Study and BT Checklist for evaluating risk exposures.
- If new to the AOP, associate with a mentor or co-counsel for the BT representation.
- Make sure that staff is properly trained on filing requirements related to a BT matter.
- Avoid representing all parties in a BT matter.
- Avoid representing a client in a transaction with an unrepresented party.

CNA Risk Control Resources

Visit <u>www.cna.com/lplriskcontrol</u> for *PROfessional Counsel* and *InPractice...with CNA* for practical guides, articles, industry trend studies and other self-help tools. CNA publishes informative articles addressing issues of interest to Business Transactions lawyers, including:

- "Investigating the Hidden Risks of Business Transactions Practice: A Claim Study for Lawyers"
- "Business Transactions Checklist"
- "The Conflicts Conundrum: Avoiding and Managing Conflicts of Interest"
- And more



For more information, please call us at 866-262-0540 or email us at lawyersrisk@cna.com.

The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal coursel and/or other professional advisors before applying this material in any particular factual situations. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. "CNA" is a service mark registered by CNA Financial Corporation with the United States Patent and Trademark Office. Certain CNA Financial Corporation subsidiaries use the "CNA" service mark in connection with insurance underwriting and claims activities. Copyright © 2016 CNA. All rights reserved. Published 7/16.