



PROFESSIONAL COUNSEL®

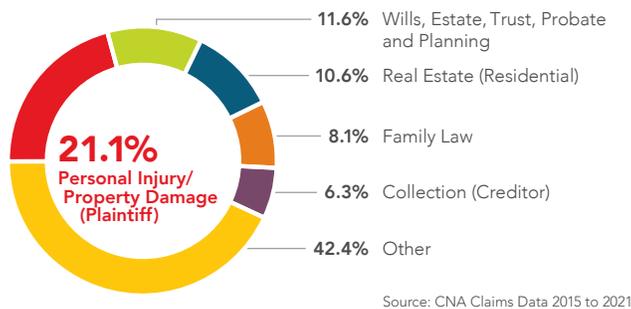
Advice and Insight into the Practice of Law®

Professional Liability Fact Sheet: Plaintiff's Personal Injury/Property Damage

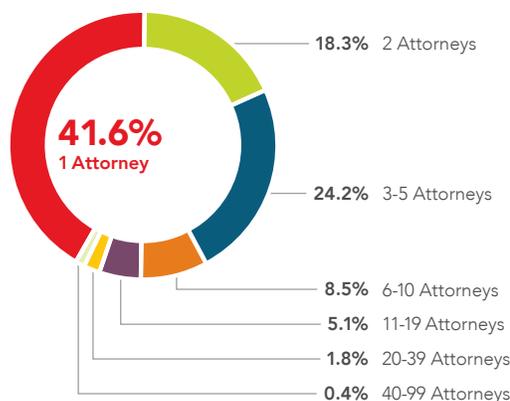
Description of Practice Area

Includes the representation of parties in actions to recover for personal injury, wrongful death, or property damage resulting from intentional or unintentional acts, negligence, and other causes. Libel and slander actions, medical malpractice and product liability suits where any form of personal injury or property damage is involved are also included.

Claims by Area of Practice



Claims by Firm Size

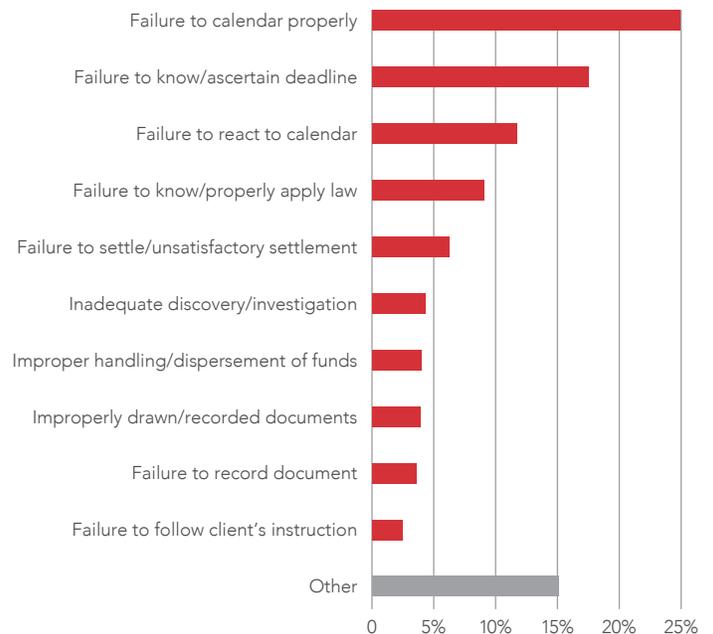


Quick Stats

- #1 Claims Area by Count
- Average Number of Claims Paid Per Year: 271
- Average Cost per Claim: \$92,696
- Average Yearly Cost of all "Personal Injury/Property Damage - Plaintiff" Claims: \$25,157,823

Source: CNA Claims Data 2012 to 2021

Top Allegations Asserted in Plaintiff's Personal Injury/Property Damage Claims



Risk Management Tips

Calendaring

The top three allegations in this area of practice are related to calendaring errors. It is imperative that attorneys and legal support staff recognize the crucial role correct calendaring plays in avoiding a legal malpractice allegation.

At a minimum, a master calendar should have at least one back up that would not be affected by a ransomware or software crisis. Rather than relying on the incident date provided by a prospective or current client, attorneys should verify by documentation, electronic record or video surveillance/recording. Attorneys should inquire about all potential parties to a matter or litigation, and potential witnesses.

Beyond calendaring the statute of limitations, attorneys may want to calendar a potential withdrawal date or time to review the status of the matter and determine if the representation should proceed. This is an evaluation that should take place at least six months out from a trial date or statute of limitations to allow a current client to locate new counsel to take over the representation, if necessary.

Legal Holds, Notice Requirements and Lost Evidence

Understandably, the major concern is often the statute of limitations when contemplating representation. However, an attorney should also consider how much time has passed since the incident and if opportunities have been lost to file legal hold notices to preserve evidence. An attorney must also evaluate the potential defendants in a matter and whether a notice requirement has been met. The statute of limitations may be irrelevant if a potential matter is defeated for failure to comply with a notice requirement. These examples also speak to the importance of not dabbling in this area of practice. The general information an attorney has related to statute of limitations and other timelines may not incorporate other deadlines that, if missed, may defeat the filing of a matter.

Prospective Clients

Because attorneys concentrating their practice in Plaintiff's Personal Injury/Property Damage tend to interact with a high volume of prospective clients, it is imperative that attorneys and legal support staff act cautiously to avoid confusion as to whether or not the attorney-client relationship has been established. Attorneys and their staff should not accept any information from a prospective client until all necessary contact information is collected. Law firms must have current contact information in case a declination letter needs to be generated. Attorneys should calendar a response time in their docket to avoid a lingering potential matter and possibly a missed statute of limitations.

Prospective clients must be informed that an attorney-client relationship has not been formed and the conversations and communication are for the sole purpose of determining whether or not they will transition to a current client of the law firm. Confidential information should not be collected until after a conflict check is completed and it has been determined that the prospective client will be accepted as a current client.

Current Clients

The establishment of an attorney-client relationship must be started with a properly drafted and signed engagement agreement. As an advocate for their client, an attorney must educate the client on the representation and, if applicable, litigation process. Attorneys must appreciate that their client is likely unfamiliar with the process of pursuing a claim related to personal injury or property damage. As a representation that may last for years, attorneys should start with an overview of the process, timeline, expenses and realistic expectations.

Money Matters

Discussions related to money may be uncomfortable for some people. When it comes to an attorney-client representation, payment discussions should be initiated at the beginning of the process. Clients must be educated on how they will pay for legal services – flat fee, hourly rate or contingency fee. Clients should know what expenses they will be expected to pay related to the representation – court fees, discovery costs, travel, deposition transcripts, legal support staff time, expert witnesses and more. Under no circumstances should a client first hear of fees and expense at the end of the representation. A client who feels wronged by their attorney is more likely to file a disciplinary complaint or legal malpractice claim. To avoid this contention, the fees and expenses should be documented at the beginning of the representation in the engagement agreement. The engagement agreement may be referred to at the time of settlement or following a verdict and payment of damages to remind the client of the discussion as to how the money would be distributed amongst the parties and law firm.

Communication

Communication in this area of practice goes beyond keeping a client apprised of the matter. Because the pool of potential clients is so vast, attorneys will represent clients from all walks of life and educational levels. Part of being an advocate for clients, is educating them on how the legal system works, how long it will take and what they may expect to obtain from the matter. It is also imperative that clients understand there is no guarantee of success or a large payday. Also, because legal support staff are in constant contact with the clients, it is necessary that they understand that client expectations must remain realistic and not exaggerated by comparing another matter or outcome to the current representation of the client.

Document Tactical Decisions

Reality reveals that not every interaction or conversation with a client will be documented in the client file. However, it is good risk management practice to document any and all tactical decisions that are made over the course of the representation after discussion with the client. Tactical decisions include, but are not limited to: who to name as plaintiff; who to name as a defendant in litigation; who to depose as part of discovery; whether to accept or reject a settlement offer; whether to agree to an annuity as part of settlement; whether or not to appeal a verdict. These are decisions that are made over the course of a representation and may be reflected upon and regretted by the client if they find the outcome unsatisfactory. Attorneys may rely upon their well-documented file to remind the client of conversations on tactical decisions and the path chosen by both counsel and the client.

We're Number One!!!

Attorneys that concentrate their legal practice in the area of Plaintiff's Personal Injury/Property Damage typically incur the most legal malpractice claims. Historically, this area of practice may drop to second place in the number of claims, but are consistently in the upper echelon of legal malpractice claims. Attorneys in this area of practice must remain vigilant of the exposures in their daily practice and of the need to incorporate associates and legal support staff in risk mitigation and claim avoidance.

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