

## 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

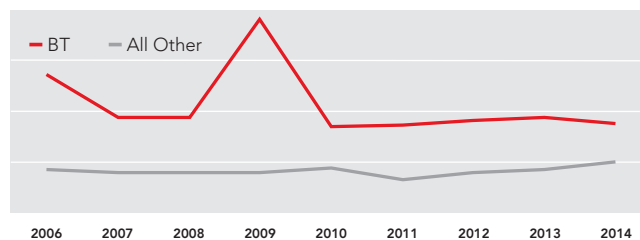
- **190**—Approximate number of reported Business Transactions claims per year.
- **\$12.65 million**—Average yearly cost (indemnity and defense) of Business Transactions claims per year for the last 5 years.
- **\$140,000**—Average per claim cost for a BT claim.
- **24%**—Share of firms (with 34 or 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.

Historical Claim Severity (per 1K atty)



Source: CNA Claim Data

### Top Causes of Business Transactions Claims

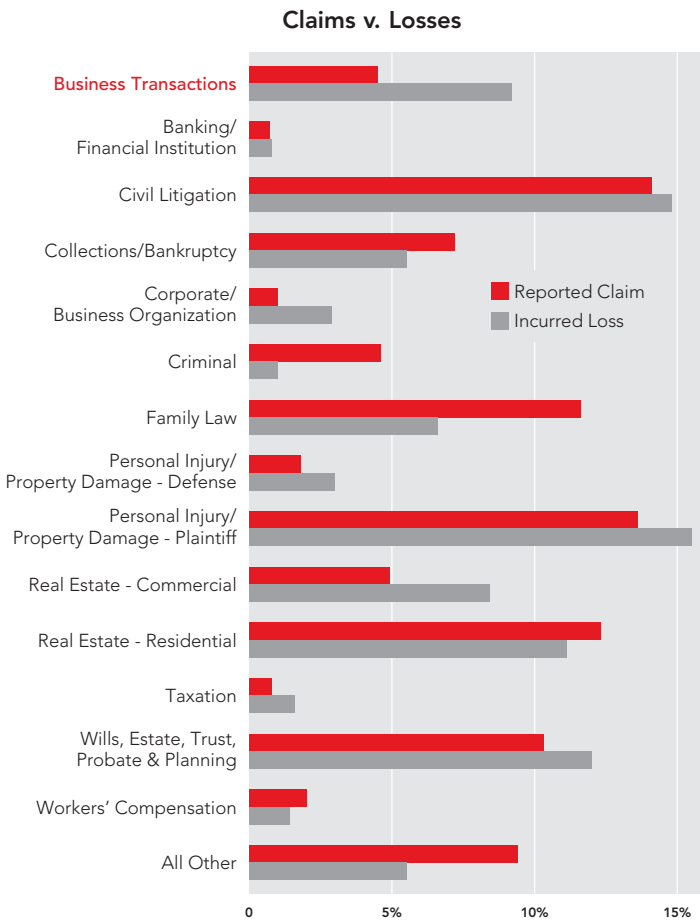
- Improperly Drawn/Recorded Documents
- Conflicts of Interest
- Failure to Know/Properly Apply the Law
- Fraud
- Improper Handling or Disbursement of Funds

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.



Source: CNA Investigating the Hidden Risks of Business Transactions Practice: A Claims Study for Lawyers

## 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 [www.cna.com/lpriskcontrol](http://www.cna.com/lpriskcontrol) 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



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