



## Affinity Programs

# Lawyers' Professional Liability Claim Scenarios

At CNA, we take a collaborative approach to claim handling – working with our insureds to achieve the best possible outcome. For our insureds, this facilitates informed decision-making, fewer surprises and an overall smoother claim process. While no two Lawyer's Professional Liability (LPL) claims are alike, and results can certainly vary, the following examples illustrate a range of LPL claim scenarios.

1. The claimant retained the insured to pursue a personal injury action following a motor vehicle accident. The claimant was rear ended by another vehicle and sustained neck and back injuries. The accident occurred in New Jersey, but the insured erroneously docketed the statute of limitations for a New York action, which has a longer statute of limitations. Thus the claimant was barred from bringing a personal injury action against the other driver. Following the accident, the claimant was diagnosed with a lumbar region tear and herniation at L5-S1 level in his lumbar spine, and underwent a decompression and fusion surgery.

Given the lack of liability defenses, unpaid medical bills in the amount of \$79,000, pain and suffering prior to the surgery for nearly a year, an invasive back surgery and a recovery period, and potential for hardware replacement and revision back surgery. Total expense and indemnity was approximately \$285,000.
2. The insured represented the claimants in connection with a commercial loan. The intent of the parties was for the loan to be a non-recourse loan so as to not hold the claimants personally liable in the event of a default. Several years later the loan went into default and the note was sold to another lender. The new lender filed suit against the claimants and it sought to hold them personally liable based on their interpretation of the loan documents. The interpretation of the loan contract, which was drafted by the Insured, became at issue and the court determined that the contract was unambiguous in the lender's favor. This decision based on the Insureds scrivener's error, which was essentially the omission of one parenthetical. This decision was also in spite of affidavits from all of the original parties to the loan contract, stating the intent of the loan was not full recourse. The claimants settled the underlying dispute for \$1.6M and then pursued a claim against the insured for the amount of the settlement and \$465K in related attorneys fees. This matter ultimately resolved at mediation. The total expense and indemnity for this case was approximately \$800,000.

3. In a Workers Compensation case, the attorney is claimed to have failed to advise her client that he had the option of pursuing a tort claim against his employer as opposed to filing a petition under the Workers Compensation Act. That option existed because the employer was uninsured at the time of the accident. While the attorney's file contains numerous notes that indicated she advised the client on several occasions that he could sue the employer for personal injuries, there was nothing in writing to the client that confirms these conversations took place. The difference in recovery between a workers compensation and personal injury lawsuit is significant, so the client could have successfully argued that even if his attorney orally advised the client, she had a duty to put this advice in writing so that the client could make an informed decision. The attorney did not present well during her deposition and there were e-mails where she refers to the client as an idiot and that he should see a psychologist. Based on the above, it was determined it was more likely than not that a jury would find liability against the attorney.

Due to the unfavorable liability position, poor venue, and sympathetic plaintiff, the matter was resolved for a reasonable amount at mediation. The total expense and indemnity was approximately \$500,000.

4. This Philadelphia County matter arises from an attorney's failure to timely file a wrongful death case sounding in medical malpractice against a gastric surgeon. The surgeon recommended an allegedly contraindicated surgical procedure based on the patient's troubled medical history. The surgery resulted in sepsis and death from infection within days following the procedure. The Estate of the decedent approached the attorney to file a medical malpractice claim for wrongful death. The attorney accepted the case but failed to timely file it. The Estate then retained one of the nation's best plaintiffs' firms to prosecute the legal malpractice case against the attorney. Other aggravating facts included the surgeon's recorded history of drug abuse and a prior similar wrongful death action.

An extensive internal review of the matter by the carrier resulted in the early identification of a tough case with substantial exposure. It allowed for the formulation and implementation of a plan of action that resulted in substantial cost savings and the added benefit of having the attorney not being named in Philadelphia County litigation which would have tarnished his reputation.

The total expense and indemnity was approximately \$2,000,000.

## At CNA,

we understand that no matter how prepared you are for the unexpected, there's always the possibility you may need to file a claim. And should you ever need to, our experienced Lawyers Professional Liability claim team is ready to handle your claim accurately and efficiently, so you can get back to doing what you do best.

For more information visit [cna.com/lawyers](https://cna.com/lawyers).

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