

# **THE LAW FIRM LIABILITY TERRAIN: PUBLICLY-REPORTED SETTLEMENTS AND VERDICTS**

**By**

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It is no secret that law firms and lawyers face significant professional liability and responsibility risks. There are at least 64 publicly-reported settlements by or verdicts against large and sophisticated law firms that exceed \$20 million dating back to the mid-1980's.<sup>1</sup> The largest is a \$108 million settlement reached in 2004, with the second largest being a \$103 million verdict returned in 2010. The \$20 million plus cases break down this way:

- 41 attributable to dishonest clients
- 11 attributable to conflicts of interest
- 3 attributable to mistakes
- 3 attributable to a combination of a dishonest client and a conflict of interest
- 2 attributable to malicious prosecution
- 1 attributable to a mistake coupled with a conflict of interest
- 1 attributable to a dishonest client and a mistake in an extended representation of a client
- 1 attributable to a firm's dishonesty (Milberg LLP's payment of secret fees to class action plaintiffs)
- 1 attributable to a lawyer's dishonesty (The O'Quinn Law Firm's settlement of allegations that it over-charged clients for expenses in a breast implant class action)

There are, of course, other settlements exceeding \$20 million that have not been publicly-reported.

Additionally, there are numerous settlements and verdicts in the \$3-20 million range, with the \$3 million floor being significant because it exceeds all but the very largest law firms' self-insured retentions.<sup>2</sup> Information on cases in this range is difficult to

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<sup>1</sup> The information on settlements and verdicts reported here is derived from data collected and maintained by Aon Professional Services. All information is current as of December 29, 2014.

<sup>2</sup> With respect to settlements and verdicts in the \$3-20 million range, it is surely true that numerous matters are not publicly-reported, or are reported in such obscure fashion that they go unnoticed. Accordingly, while the \$3-20 million claims statistics are believed to be representative of matters within the range, they are not all-inclusive.

locate and verify, but, based on available data, recent cases may be characterized as follows:

- 33 attributable to mistakes
- 17 attributable to dishonest clients
- 13 attributable to conflicts of interest
- 3 attributable to malicious prosecution
- 1 attributable to fraud

What is perhaps most interesting about the settlements and verdicts in the \$3-20 million range is the prevalence of mistakes as the cause of loss, which distinguishes cases of this size from those exceeding \$20 million. There probably are two reasons for this. First, the cases in the \$3-20 million range include a number of matters involving small law firms. Because lawyers in small firms often do not work in teams in the same way that their counterparts at large law firms do, there is a greater likelihood that mistakes will escape notice until they allegedly harm clients. Lawyers working in teams in large law firms tend to catch mistakes before work gets out the door. Second, dishonest client claims and conflict of interest allegations often put “heat” in cases, thus driving up settlement and verdict value, while simple negligence rarely is an aggravating factor. Thus, it is logical that most of the largest settlements and verdicts would be rooted in allegations of dishonesty and conflicts of interest.

Regardless of whether one examines the cases exceeding \$20 million or those in the \$3-20 million range, it is important to recognize that these figures do not include defense costs. Defense costs commonly equal or exceed amounts paid in settlement or to satisfy judgments. Additionally, there are other serious risks that do not necessarily result in large settlements or judgments. For example, a lawyer’s misconduct may have significant personal consequences, ranging from professional stigma to court-imposed sanctions to professional discipline to criminal prosecution. Lawyers’ misconduct may bruise their firms’ reputations or seriously impair client relationships. Any claim against a firm necessarily forces lawyers within the firm to devote time and energy to its resolution—time that could be more productively spent on billable matters, business development, or other positive activities intended to advance the firm’s interests.