

Advisor

An update on issues regarding liability protection for the legal profession.



Trust Account Scam Hits Home A True Story

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I had read from various sources, including The Florida Bar, that scam artists were actively trying to use lawyer trust accounts as a conduit to fraud and theft schemes, but to my knowledge, it was not something that local attorneys were dealing with. I just met with the FBI and to its knowledge, while the scam is being used on local businesses and individuals a great deal, ours was the first law firm hit with it. Here is what happened:

The story begins:

I was engaged via email and follow-up written correspondence by Microtel, Inc., a manufacturer in Grand Rapids, Michigan, to collect on a

\$325,000 debt alleged to be owed to Microtel by a local company Intellitec, Inc. I was hired to make a collection demand and, if needed, litigation. Importantly: I received a signed engagement letter and a request from Microtel to schedule a conference call to discuss the details of the dispute. At that point, nothing was out of the ordinary.

A few days later:

While we were trying to set up a phone conference with Microtel's president, Microtel sent me an email indicating its representatives had spoken with Intellitec and we should be receiving payment. Within days, I had an official check from Wachovia sitting on my desk for a little over \$325,000, delivered by overnight delivery, payable directly to my firm's trust account.

Still, nothing totally out of the ordinary, but I was growing a bit suspicious as the Intellitec letter did not say very much and the folks at Microtel were not making it easy for my office to set up a phone conference with my new client to discuss the facts of the case or how to proceed.

I did not want to deposit the check into my trust account until I was certain Microtel was prepared to accept it as payment in full, so I emailed Microtel and called the company asking again to speak to the president. It was the Wednesday before Thanksgiving, so the banks were closed and I put the check in my safe.

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The following Monday morning, my paralegal got a call from Microtel's president asking what the heck was going on and who we were. He had just gotten all the emails from our office. He said he never contacted us for representation and, while he had done business with Intellitec a few years before, they did not owe him any money.

By chance, he happened to be looking at an old email account that he rarely used anymore and saw the communications between my firm and someone holding themselves out to be him and acting on behalf of his company. At that point, the scam was up. He went to the Grand Rapids FBI; I went to the Daytona Beach FBI.

The story ends:

The scam artists in this case were brazen enough to: 1) hack into an old email account belonging to the president of a successful Michigan business, 2) actually use his email account to conduct business with my firm and engage our services, 3) forge an engagement letter as president of Microtel with my law firm, 4) forge letterhead from Intellitec, a local business operating as a going concern, and 5) forge an official check from a bank.

Had I deposited the money into my trust account, the next step would have been for Microtel to instruct me to wire the money to an account of their

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specifications. Typically, they instruct the lawyer to deduct the amount owed for legal fees and send the creditor the rest of the monies being held in trust. While we would not do that without the funds having actually cleared, in the interim, the imposter Microtel would have tried to get information from my firm's staff such as routing numbers, etc., to the trust account.

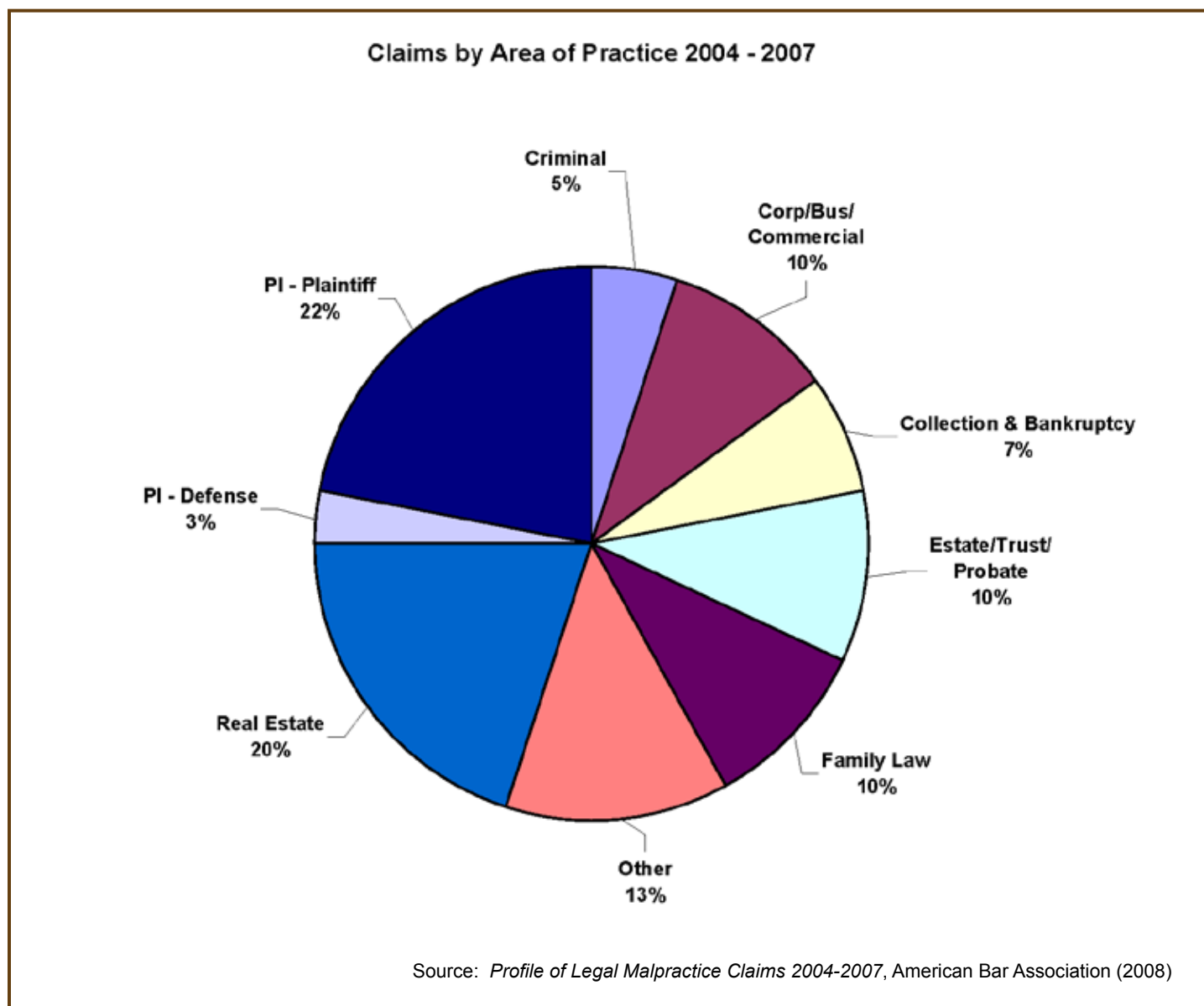
A number of firms are on the hook around the country for not waiting to make sure the checks clear before wiring the funds to the imposter client. Also, the banks are taking the position that, even if they verbally tell the lawyer that the funds are "available" or even if the wire transfer to the trust account is accomplished, the bank can still pull money back from the lawyer's trust account to satisfy the bogus official check.

The FBI says it is likely scam artists from Canada acting as an intermediary to other Nigerian scam artists. What makes it particularly realistic is that the written communications are not like the typical Nigerian or overseas emails you receive that are obviously scams. These are well written communications from someone with a very good command of the English language, and usually from a business person with very official looking documentation.

If anyone has a similar situation, they should contact the FBI. The Daytona Beach FBI agent I contacted says he has stacks of similar incidents on his desk from other businesses in the community being sued by the banks that made payment on the checks. 🌴



Claims by Area of Practice



Since 1985, the American Bar Association (ABA) has published a study of national legal malpractice claims data called the *Profile of Legal Malpractice Claims*. The chart above, "Claims by Area of Practice," is from the fifth and latest study, covering data from 2004 through 2007.

Regarding the results of the current study, the ABA wrote: ". . . noteworthy is how little the percentages have varied since the 2003 Study

for the vast majority of claims categories." Personal Injury Plaintiff and Real Estate law have consistently ranked number one and number two respectively. The most dramatic change was the seven percent decrease in claims in the Personal Injury Defense category. 🌸

See a comparison of the areas of practice from all of the ABA malpractice studies, on page 4.

Comparison of Claims by Area of Practice: All ABA “Profile of Legal Malpractice Claims” Studies

Areas of Practice	2007	2003	1999	1995	1985
Personal Injury - Plaintiff	22%	20%	25%	22%	25%
Real Estate	20%	16%	17%	14%	23%
Family Law	10%	10%	10%	9%	8%
Estate, Trust and Probate	10%	9%	9%	8%	7%
Collection & Bankruptcy	7%	8%	8%	8%	11%
Criminal	5%	4%	4%	4%	3%
Corporate/Business Org.	5%	6%	9%	9%	5%
Bus. Transaction/Commercial	5%	3%	4%	11%	3%
Personal Injury - Defense	3%	10%	4%	3%	3%
All Other	13%	14%	11%	13%	11%

Totals may not equal 100% due to rounding.

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