

# USI Affinity Malpractice Insurance Webinar – Insurance Considerations



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Professional Liability Practice Leader  
USI Affinity**





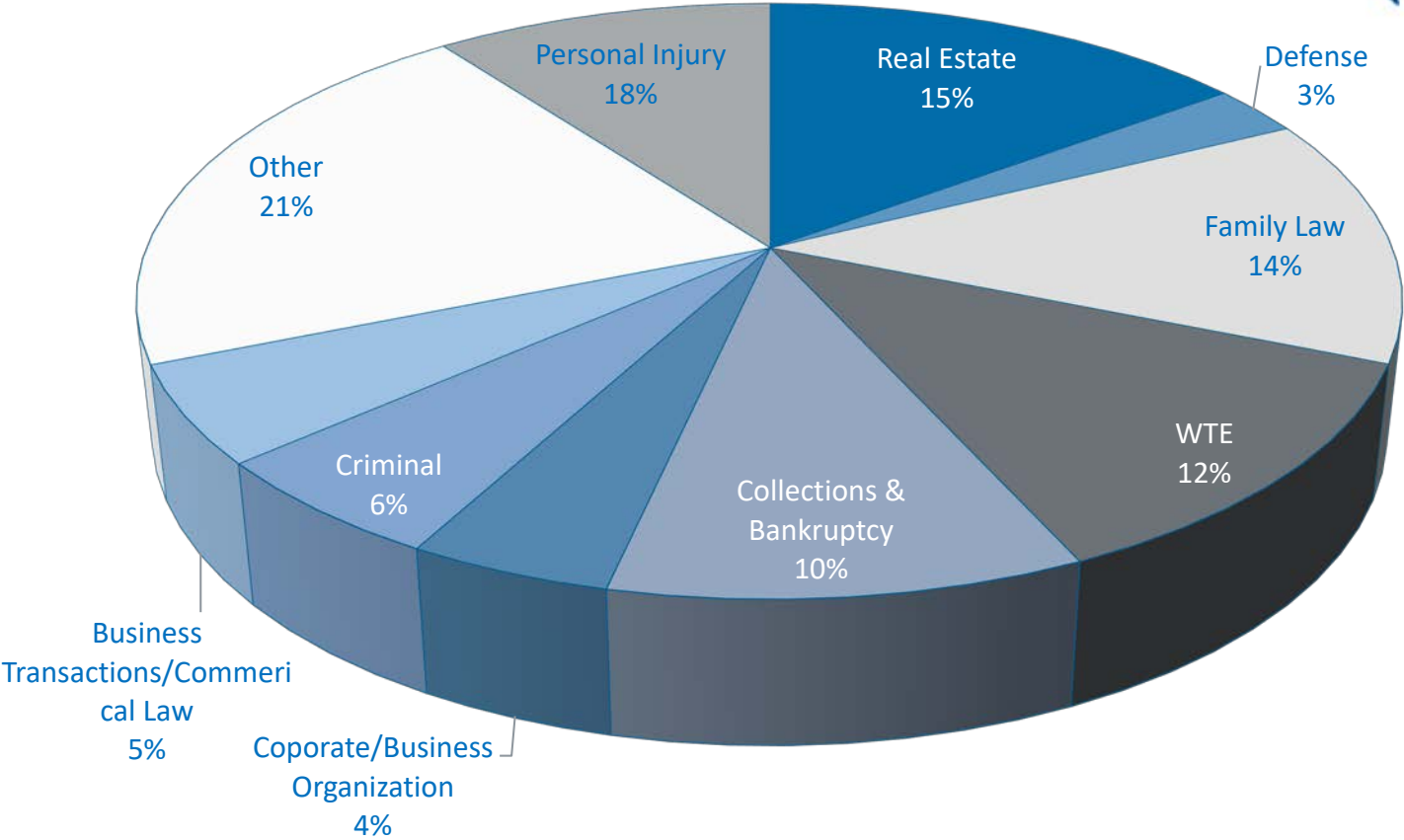
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**Senior Vice President**  
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# Agenda

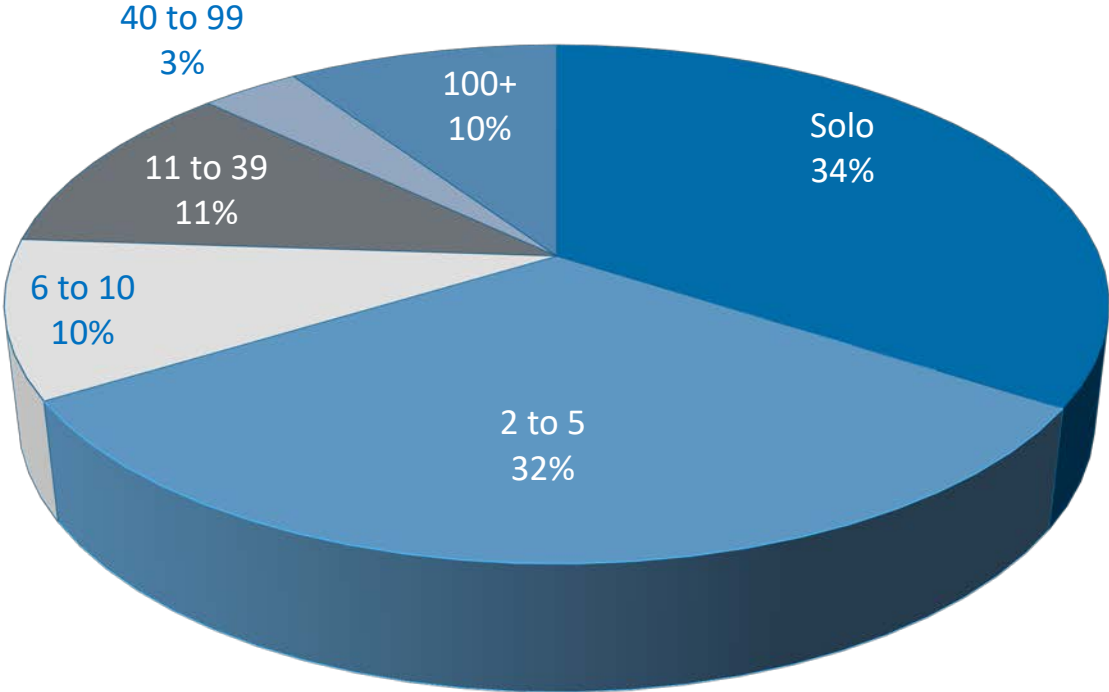


- Where do Claims come from?
- What is Covered?
- Who is Insured?
- Purchasing the appropriate coverage
- The Policy
- The insurance application
- Selecting a Carrier
- Selecting a Policy
- Selecting a Broker
- Cyber Liability

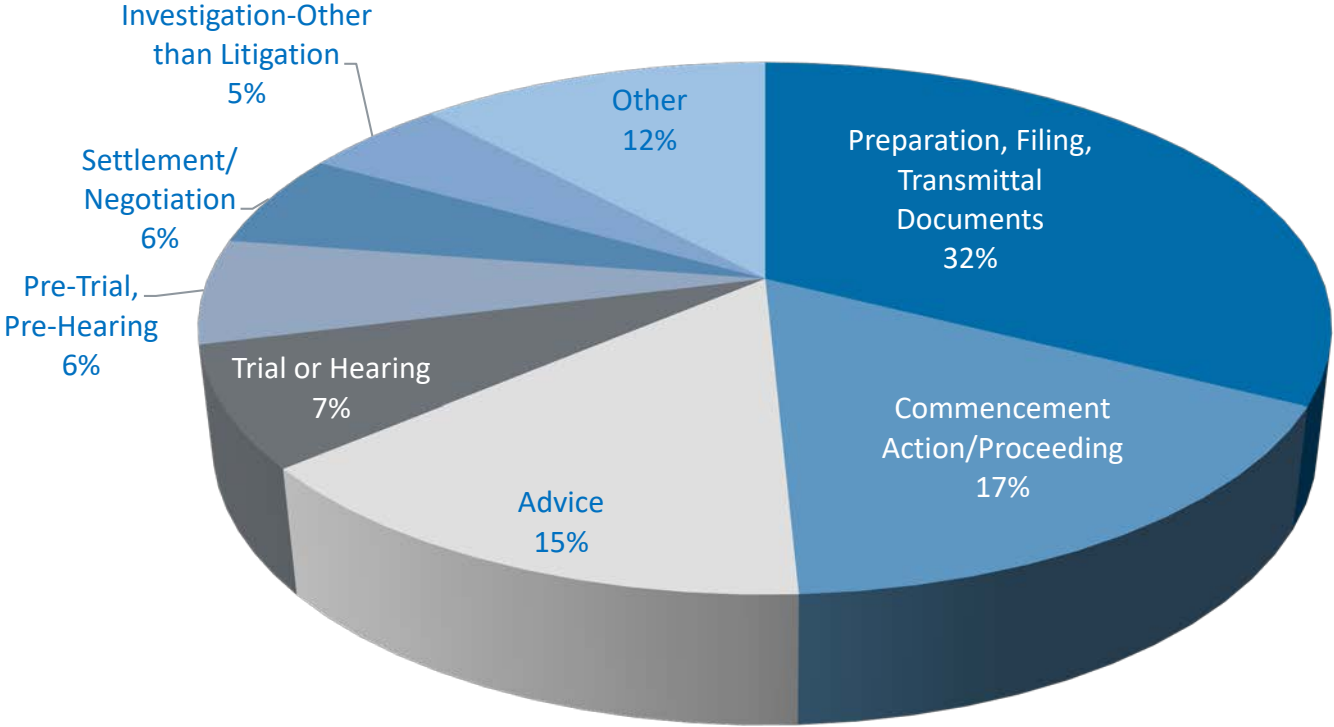
# Claims by Areas of Practice



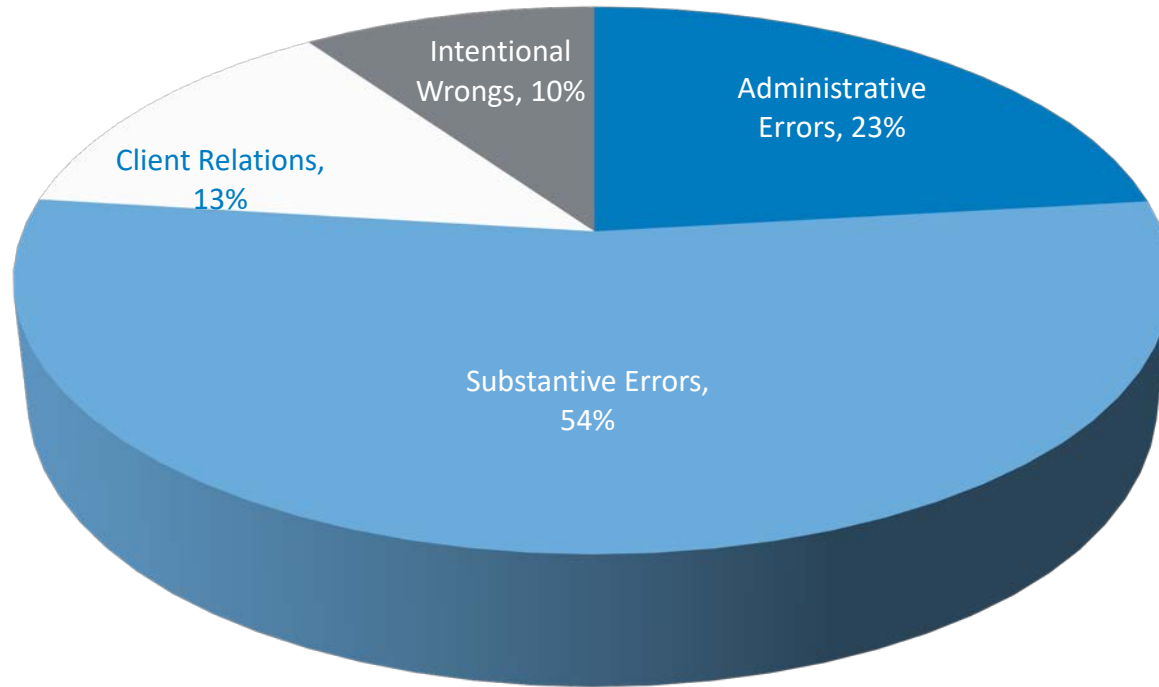
# Percentage of Claim by Size of Firm



# Percentage of Claim by Type of Error



# Percentage of Claim by Type of Alleged Error



# Claims Made vs. Occurrence Policy



- An LPL policy generally provides coverage for demands made upon the policyholder for damages brought forth during the policy period resulting from an error or omission within the firms covered prior acts date.
- An “occurrence” policy (such as a homeowner’s policy) normally insures an unexpected event within the policy period that result in bodily injury or property damage.



# What is Covered?



- **Professional Services**
  - Title Agent
  - Notary Public
  - Activities as an Officer or Director
  - Author or Presenter
  - Investment Advice
  
- **Supplementary Coverages**
  - Disciplinary Proceedings
  - Subpoena
  - Loss of Earning
  - Public Relations Expense
  - Breach Notification Expense

# Who is Insured?



- The Named Insured
- Is coverage provided to:
  - Shareholders or partners?
  - Employees?
  - Former employees?
  - “Of Counsel” lawyers?
  - Independent contractors?
  - The estate/heirs/executors/administrators of an insured?

# Common Exclusions



- **Intentional Acts**
  - Dishonesty
  - Fraudulent or Criminal Acts
- **Bodily Injury / Property Damage**
- **Insured vs. Insured**
  - Unless Attorney Client relationship exists and professional services are being rendered.
- **Owned Equity**
  - Normally greater than 10%-15%

# Are all insurance policies the same?



- Deductible Options (Per Claim vs. Aggregate)
- Expense Allowances (Inside Limits vs. Outside Limits)
- Definition of Professional Services
- Exclusions
- Supplementary Coverages

# Prior Acts Coverage



- “Retroactive Date”
- The date continuous coverage was first obtained
- Claims triggered before this date are not covered
- Changing Carriers

# Extended Reporting Periods



- “ECRP or Tail Coverage”
- Available for attorneys who retire from the practice of law
- Provides coverage for claims arising from conduct within the policy period which would otherwise be covered by the policy but the claim is first made during the extended reporting period.
- Claim must have occurred while policy was in force.

# Proper and timely notice



- Report incidents or situations to your carrier immediately
- Provide written notice of claim
- These circumstances may be considered a claim:
  - A demand is received for money or services
  - Service of suit
  - Institution of alternative dispute resolution or arbitration proceedings
  - Disciplinary action is threatened or filed
  - Notice received by any insured that is the intention of a person or entity to hold the insured responsible for the consequences of an alleged wrongful act
  - Any request to waive a statute of limitations

# What is appropriate coverage?



- The dollar value of transactions or cases you work on
- The cost of defending a claim
- The value of assets you want to protect
- Potential billable hours lost



# What can cause premiums to be high?



- Step Rating
- Area of Practice
- Dabbling
- Geographic Location
- Attorney to Staff Ratios
- Retainer Agreements
  - Engagement Letters
  - Disengagement Letters
  - No engagement Letters
- Docket Systems
- Fee Suits

# The Insurance Application



The parts of an application:

- About the Firm
- Firm Coverage Information
- Attorney Information
- Areas of Practice
- Firm Operations & Management
- Claim/ Incident / Disciplinary Information
- Requested Coverage

# Common Mistakes on an Application



- Area of Practice Grid
- Website Information
- Attorney Information
- Missing Supplements
- Letterhead

# What should I look for when selecting a Liability Carrier?



- Experience
- AM Best Rating
- Claims Handling
- Panel Counsel
- Distribution
- Risk Management Services
  - Website
  - Claims Hotline
  - CLE
  - Newsletter & Email Alerts



## ■ **Policy Features**

- Consent to settle Provision
- Liberalization Clause
- Extending Reporting Period Options
- Broad definition of legal services
- Limited Exclusions

## ■ **Supplementary Coverages**

- Disciplinary Proceedings
- Subpoena
- Loss of Earnings
- Network Risk Coverage
  - 1<sup>st</sup> Party
  - 3<sup>rd</sup> Party

# What to consider when selecting a broker



- Experience with Lawyers
  - Benchmarking
  - Claims knowledge
  - Advocacy
- Endorsements
- Client Base
- Distribution
- Customer Service
- Full Service

# Cyber Liability – Gaps in Coverage



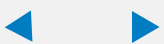
	Property	General Liability	Crime/Bond	K&R	E&O	Cyber / Privacy
<b>1st Party Privacy / Network Risks</b>						
<i>Physical Damage to Data</i>	Shaded					Shaded
<i>Virus/Hacker Damage to Data</i>						
<i>Denial of Service attack</i>						
<i>B.I. Loss from Security Event</i>						
<i>Extortion or Threat</i>				Shaded		
<i>Employee Sabotage</i>			Shaded			
<b>3rd Party Privacy/Network Risks</b>						
<i>Theft/Disclosure of private Info</i>						
<i>Confidential Corporate Breach</i>						
<i>Technology E&amp;O</i>						
<i>Media Liability (electronic content)</i>		Shaded				
<i>Privacy Breach Expense</i>						
<i>Damage to 3rd Party's Data</i>						
<i>Regulatory Privacy Defense/Fines</i>						
<i>Virus/ Malicious Code Transmission</i>					Shaded	

Coverage Provided:	White
Limited Coverage:	Shaded
No Coverage:	Dark Shaded

**Traditional Insurance Gaps to name a few:**

- Theft or disclosure of Third Party Information – GL
- Security & Privacy – “intentional act” exclusion – GL
- Data is not tangible Property – GL, Prop. and Crime
- Bi/PD Triggers – GL
- Value of Data if corrupted, destroyed or disclosed – Prop & GL
- Contingent Risks from external hosting, etc .

- Commercial Crime policies require “intent” and only cover “money securities and other Tangible Property”
- Territorial Restrictions
- Sublimits or long waiting periods applicable to any virus coverage available – Prop.



# What does Cyber insurance cover?



## Cyber/Privacy Liability

### First Party

#### Breach Notice Costs

- Forensic Investigation
- Crisis management/PR
- Notification costs
- Credit monitoring

### First Party

#### Other Business Costs

- Business interruption
- Data repair /replacement
- Cyber-extortion
- Social Engineering

### Third Party

#### Civil Lawsuits

- Consumer class action
- Corporate or financial institution suits
- Credit card brands
- PCI fines, penalties, and assessments

### Third Party

#### Regulatory Actions

- State AG investigations
- FTC investigations
- Health & Human Services – OCR (enforcement arm)
- Foreign Privacy Entities



# Questions.....





Thank you!

