

# USI Affinity Malpractice Insurance & Cyber Liability Webinar – Insurance Considerations



**Mark Lefever, CIC**  
**VP Sales and Client Management**  
**USI Affinity**





## CONTACT INFORMATION

Mark Lefever, CIC

Email Address: [mark.lefever@usi.com](mailto:mark.lefever@usi.com)

Phone: 717-572-2858

Subject Line: LPL/Cyber Liability Webinar

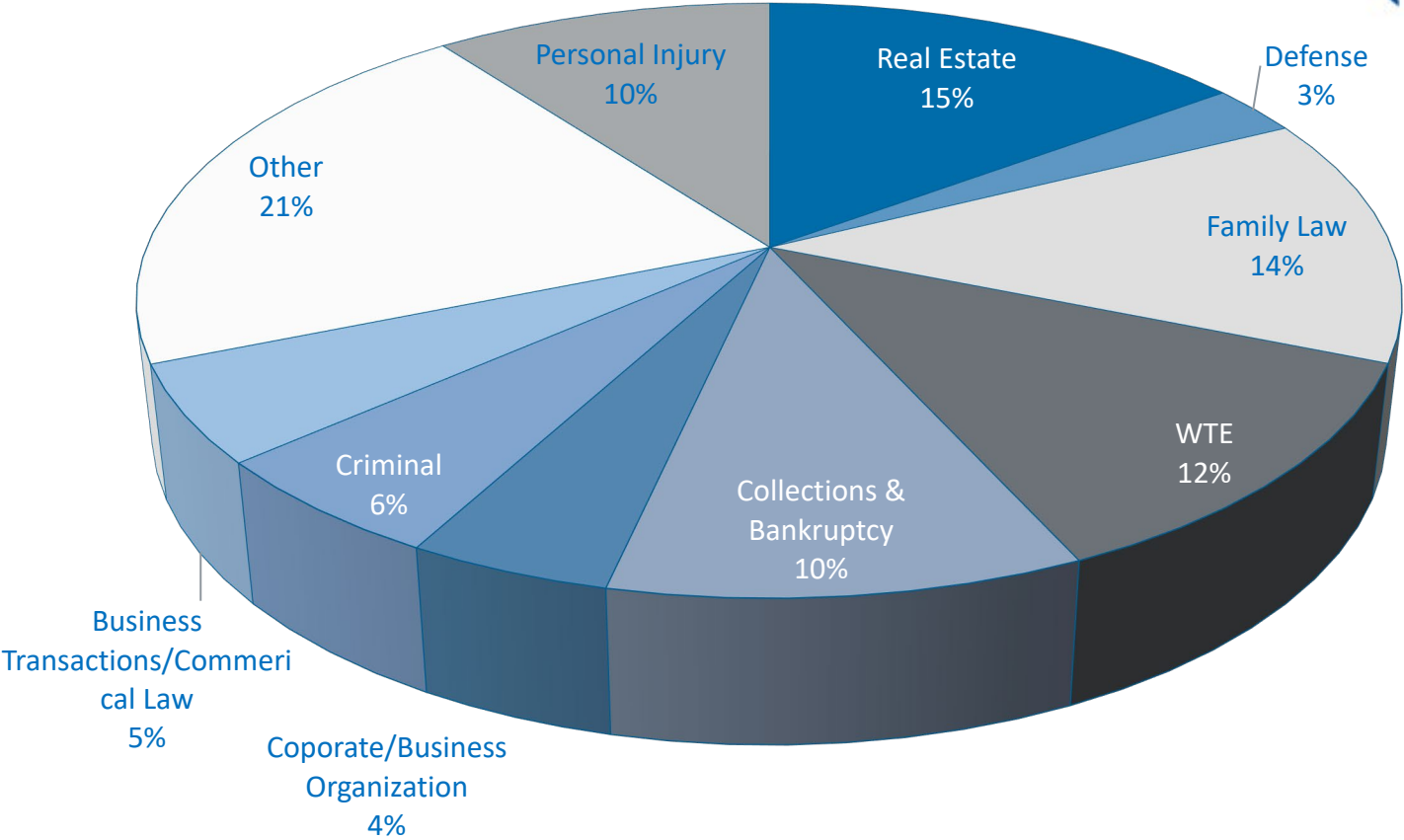
Body of Email: Question

# Agenda

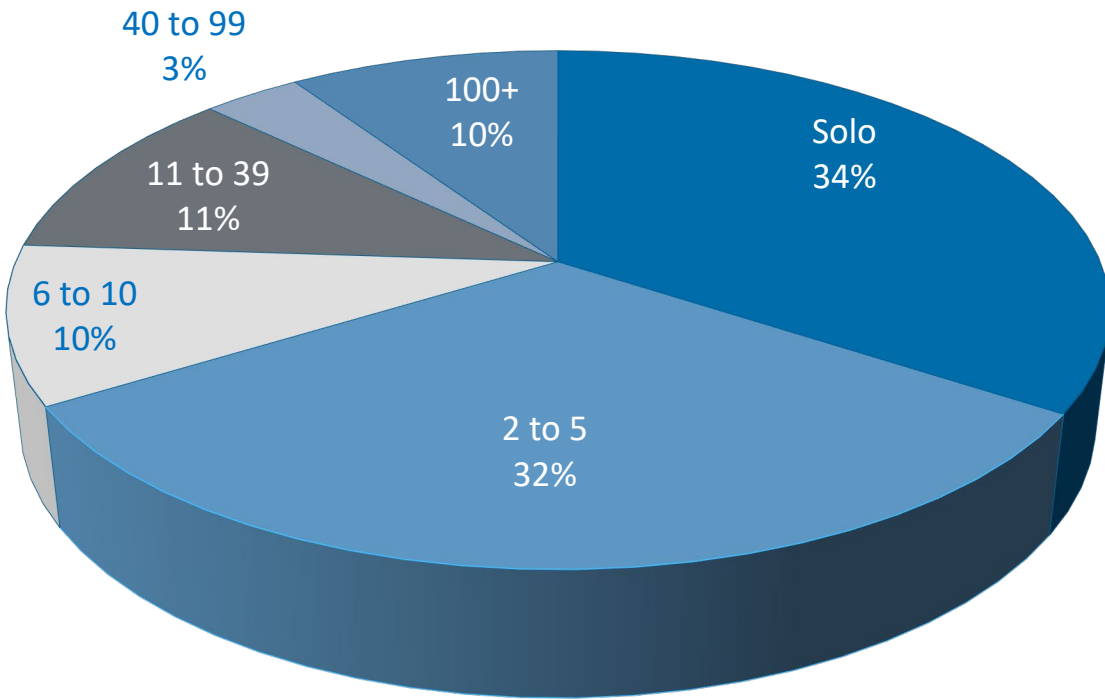


- Where do Claims come from?
- What is Covered?
- Who is Insured?
- Purchasing the appropriate coverage
- The Policy
- The insurance application
- Selecting a Carrier/Policy/Broker
- Cyber Liability Exposures
- Cyber Liability Insurance

# Claims by Areas of Practice



# Percentage of Claim by Size of Firm



# 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
  - Mediator/Arbitrator
  
- Supplementary Coverages
  - Disciplinary Proceedings
  - Subpoena
  - Loss of Earning
  - Public Relations Expense
  - Breach Notification Expense
  - Deductible Reduction

# 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
- Step Rating

# Extended Reporting Periods



- “ECRP or Tail Coverage”
- Non-Practicing ERP-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.

# 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-Engagement Letters
- Claim/ Incident / Disciplinary Information
- Requested Coverage



# Engagement Letters

## What the Carriers Want to See in your Engagement Letter

- Identity of the Client
- Thorough Scope of Representation
- Fee Structure
- File Retention and Destruction Terms
- Counter Signature



# 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 Exposures & Insurance



# Cyber Exposures – Law Firms Are Prime Targets

- Rich Collection of Data
  - Sensitive Information
    - Bank Information
      - PII
    - Poor Safeguards
  - Lack of internal training and controls
    - Lack of IT resources
      - Wireless access
    - Vendor Management
    - Lost of stolen devices
  - Internal Exposures
    - Rogue employees
    - Careless staff
  - External Exposures
    - Business associates, vendors and suppliers
    - Organized crime
    - Hackers



# Best Practice Tip

Ethical Obligations  $\neq$  Breach  
Response Obligations



## What is a "Data Breach"

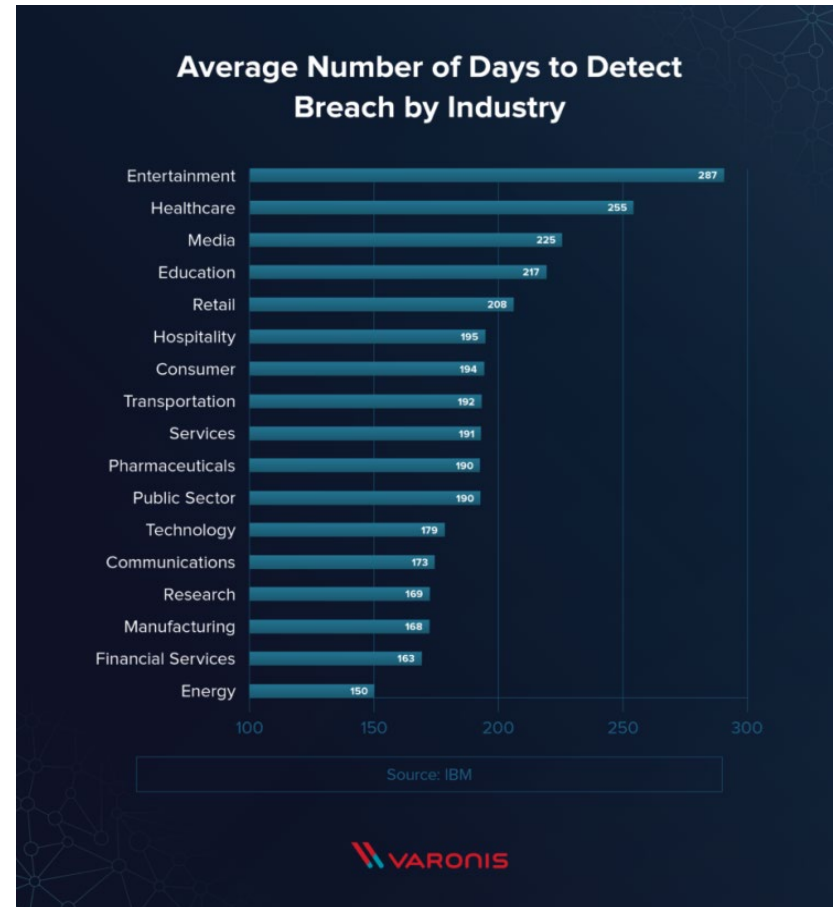
“[A] data event where material client confidential information is **misappropriated, destroyed or otherwise compromised**, or where a **lawyer's ability to perform the legal services** for which the lawyer is hired is **significantly impaired** by the episode.”



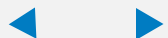


# Obligation to Monitor For a Data Breach

## System Monitoring Activities



<https://www.varonis.com/blog/data-breach-response-times/>





# **Best Practice Tip**

Prevent / Detect a  
Data Breach



# Stopping the Breach and Restoring Systems or Containment and Remediation

## Key findings:

Formation of the IR team lowered the total cost of a data breach by an average of \$360,000 from the mean cost of \$3.92 million.

**\$360,000**

IR team lowers the total cost of a data breach by an average of \$360,000

Extensive testing of the IR plan reduced the total cost of a data breach by an average of \$320,000 from the mean cost of \$3.92 million.

**\$320,000**

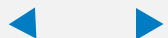
IR plan reduces the total cost of a data breach by an average of \$320,000

Organizations that both formed an IR team and extensively tested the IR plan saw the greatest savings – \$1.23 million less than organizations that neither formed an IR team or tested the IR plan.

**\$1.23<sup>M</sup>**

Savings from IR teams and testing the IR plan – \$1.23 million less than organizations that neither formed an IR team or tested the IR plan.

Source - Ponemon Institute Cost of a Data Breach Study 2019





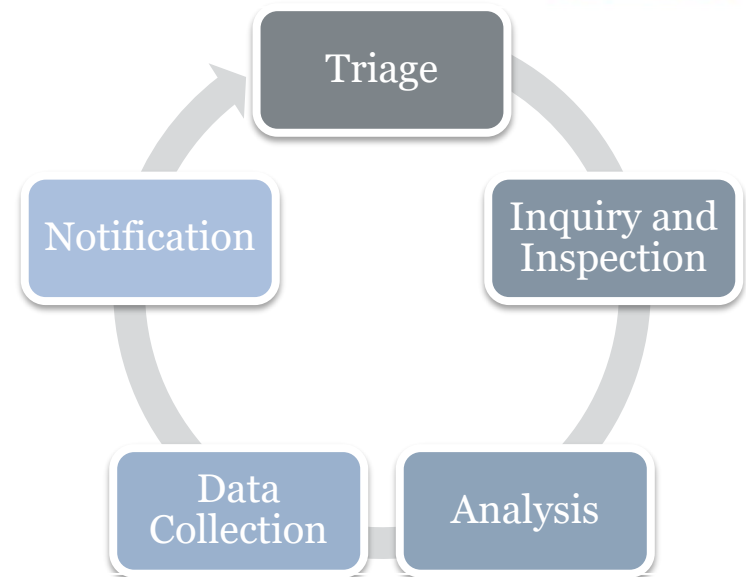
**BEST PRACTICE TIP**

# Incident Response Plan



# INCIDENT RESPONSE PLAN

**Determining What Occurred**  
**Or**  
**Incident Investigation**





# Breach Notification – Current Client

**Rule 1.4** – Obligation to communicate to current clients about a data breach



# Breach Notification – State Law

50 state analysis of:

- What is Protected Personal Information?
- What is a breach?
- When are the notice requirements triggered?



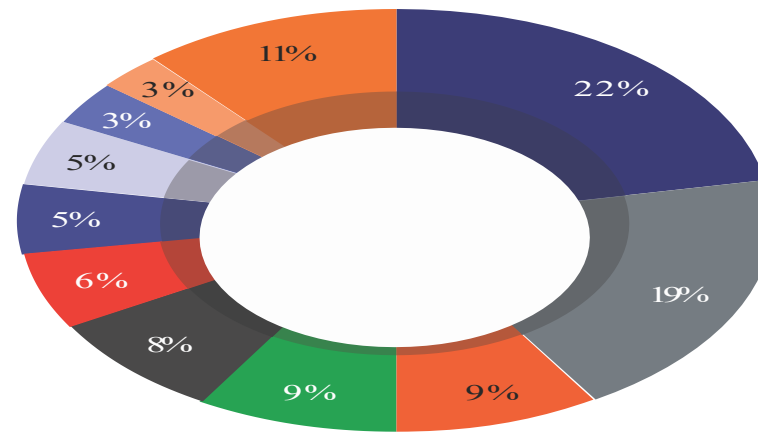
# CYBER INSURANCE





# What Industries are Effected

## Cyber Liability



- Professional Services
- Healthcare
- Retail
- Financial Services
- Manufacturing
- Technology
- Education
- Nonprofit
- Public Entity
- Hospitality
- AllOther



# Cyber Exposures – Cyber Loss

- Loss or damage to data/information
- Loss of revenue due to a computer attack
- Extra expense to recover/respond to a computer attack
- Legal liability to others for computer security breaches
- Legal liability to others for privacy breaches (not just computers!)
- Regulatory actions and scrutiny
- Loss or damage to reputation
- Cyber-extortion
- Cyber-terrorism
- Management time expended on breach response



# Cyber Exposures – How a Law Firm can Protect itself

Back-ups

Document Retention Policy

Penetration Testing

Anti-virus and Patching

Intrusion Prevention

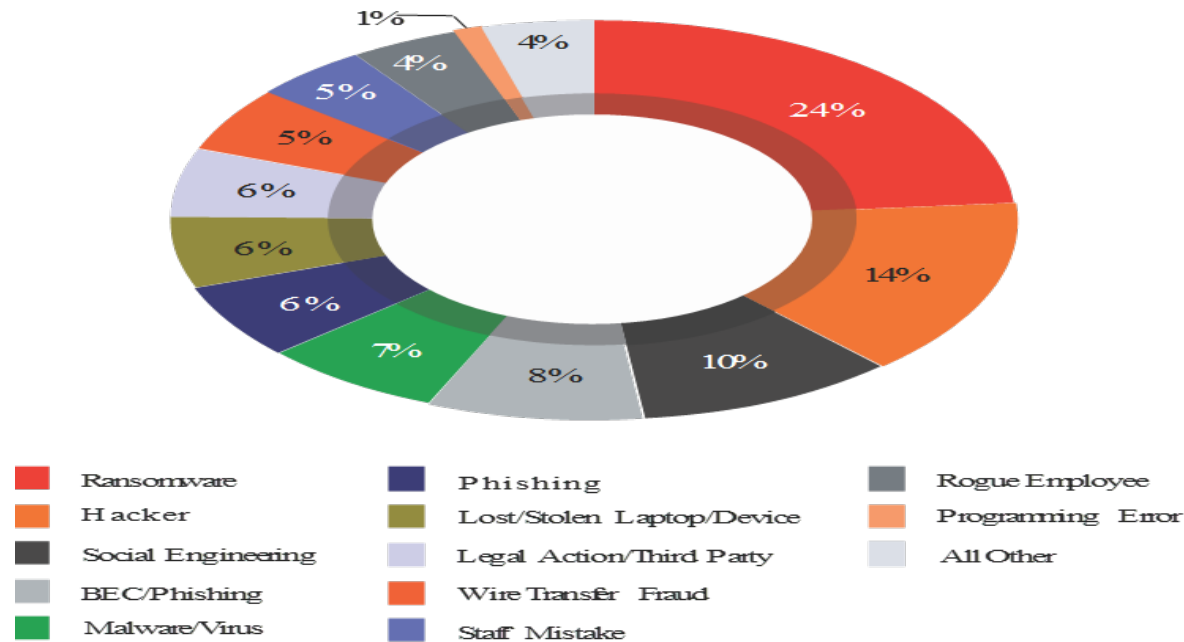
Vendor Risk Management

- Buy Cyber Coverage!
- Incident Response Planning
- Employee Training
- Risk Analysis
- Encryption
- Two-factor Authentication



# Claim Statistics – By Cause of Loss

## Cyber Liability





# Insurance Coverage Gaps

## Cyber Liability

	Property	General Liability	Crime/Bond	K&R	E&O	Cyber/Privacy
<b>1st Party Privacy / Network Risks</b>						
<i>Physical Damage to Data</i>	■	■	■	■	■	■
<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>	■	■	■	■	■	■
<i>Employee Sabotage</i>	■	■	■	■	■	■
<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>	■	■	■	■	■	■
<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>	■	■	■	■	■	■

Coverage Provided:	■
Limited Coverage:	■
No Coverage:	■

### Traditional Insurance Gaps to name a few:

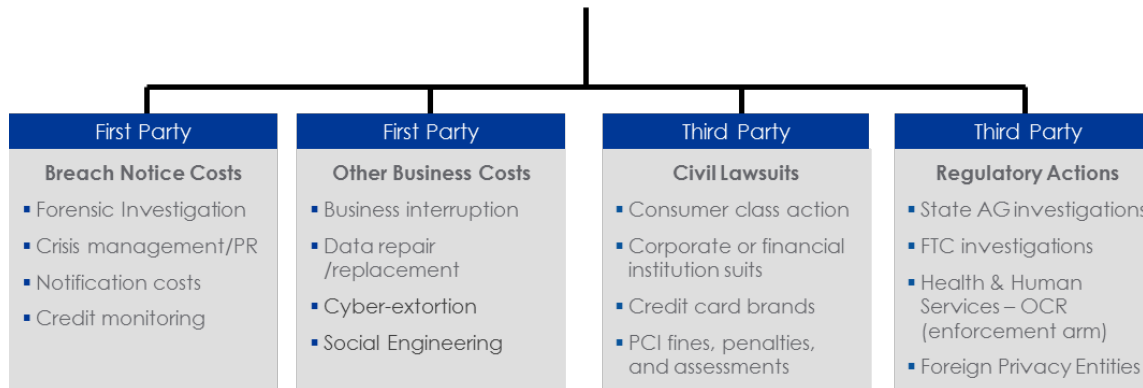
- Theft or disclosure of Third Party Information - GL
- Security & Privacy - "intentional act" exclusion - GL
- Data is not tangible Property - GL, Prop. and Crime
- Bi/PD Triggers - GL
- Value of Data if corrupted, destroyed or disclosed - Prop & GL
- Contingent Risks from external hosting, etc .

- 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 LIABILITY





# USI Affinity Contact Information



For any information on LPL or Cyber Liability Insurance please feel free to contact:

Mark Lefever - [mark.lefever@usi.com](mailto:mark.lefever@usi.com)

610-537-1435





Thank you!



# A Distinctive Level of Cyber Protection

Cyber Liability coverage built for law firms.



The American Bar Association and USI Affinity, the broker for the ABA Insurance Program, have partnered to offer a new cyber liability coverage designed exclusively for the law firm community nationwide. Law firms have an obligation to protect client information and if you use Internet, wireless connections, mobile devices, laptop computers, and/or other technology, you are increasingly vulnerable to potentially costly cyber exposures. USI Affinity is excited to bring coverage to law firms designed just for you with Crum & Forster. Crum & Forster offers comprehensive cyber insurance coverage with three core components to assist entities in managing their computers, privacy, and other related risks.

## Coverage Highlights

- Program provides special endorsements only available through the ABA and designed for firms of all sizes—solo practitioners, small firms or large firms; coverage is tailored and focused on you
- Comprehensive cyber liability (third-party) and expense (first-party) coverage
- Ransomware included up to full policy limit
- Business interruption coverage, including systems failure
- 24/7 access to the Crum & Forster Cyber Knowledge Center for the ABA with risk management services that include:
  - Cyber Training
  - Cyber Assistance Center
  - Unlimited Advice
  - Incident Response Hotline
- Cyber Liability coverage, including eCrime/social engineering, with loss limits up to \$250,000
- \$0 retention for legal and computer forensic services\*
- Broad definition of a cyber event to prevent gaps in coverage between first- and third-party
- Special ABA Member discount on premium

### Contact Mark LeFever for Additional Information



610-537-1435



mark.lefever@usi.com



Administered by



Underwritten by



This material is for informational purposes only. It is not intended to be exhaustive nor should any discussions or opinions be constructed as legal advice. The insurance policy language will determine the actual coverage afforded to an insured. Contact USI Affinity for any insurance questions you may have regarding your particular situation. USI Affinity is not responsible for the content of the information provided or for the consequences of any legal actions taken on the basis of the information provided.



# USI Affinity Where Lawyers Go For Protection

**USI Affinity is proud to announce an addition to the comprehensive policy currently available. USI Affinity and the D.C. Bar will now offer D.C. metro area attorneys and law firms a NEW coverage enhancement available only through the D.C. Bar Lawyers Professional Liability Insurance Program:**

- **Fee Suit Avoidance\*** – Have you tried suing a former client for unpaid fees – only to be counter sued for malpractice? USI Affinity understands that this practice has become more commonplace in today's market and we understand the challenges that attorneys face with this concern. To provide attorneys and law firms with another option in this situation, USI Affinity has negotiated a new policy feature that will reimburse up to \$10,000, per policy, for an attorney or law firm to recover an outstanding fee from a client.

## **Additional Highlights of the Program's Lawyers' Professional Liability Program:**

- **Settlement Control** – We give you the ability to determine when you should settle.
- **Loss of Earnings** – Recover your billable hours with our proprietary offering.
- **Subpoena Assistance** – provides reimbursement, up to the policy limit, for all reasonable attorneys fees and other costs, expenses and fees related to subpoena response.
- **License Protection** – provides reimbursement up to \$50,000 per disciplinary proceeding and \$100,000 in aggregate, per policy period.
- **Breach Event Expenses and Cyber Investigation Expenses** – Coverage for breach event expenses directly resulting from a privacy or security breach. As well as coverage for cyber investigation expenses directly resulting from a regulatory investigation regarding a Privacy Breach or Security Breach.
- **Reputation Coverage** – provides reimbursement up to \$25,000 reimbursement of reasonable fees, costs and expenses for consulting services provided by a public relations firms for each crisis event, up to \$50,000 for all crisis events in a policy period.

\* See website for additional details.

This material is for informational purposes only. It is not intended to be exhaustive nor should any discussions or opinions be constructed as legal advice. The insurance policy language will determine the actual coverage afforded to an insured. Contact USI Affinity for any insurance questions you may have regarding your particular situation. USI Affinity is not responsible for the content of the information provided or for the consequences of any legal actions taken on the basis of the information provided.

To learn more, contact USI Affinity today:  
Mark Lefever • 610.537.1435 • mark.lefever@usi.com

[www.mybarinsurance.com/dcbar](http://www.mybarinsurance.com/dcbar)



AFFINITY