



## What Solo and Small Firms Need to Know about Malpractice Insurance





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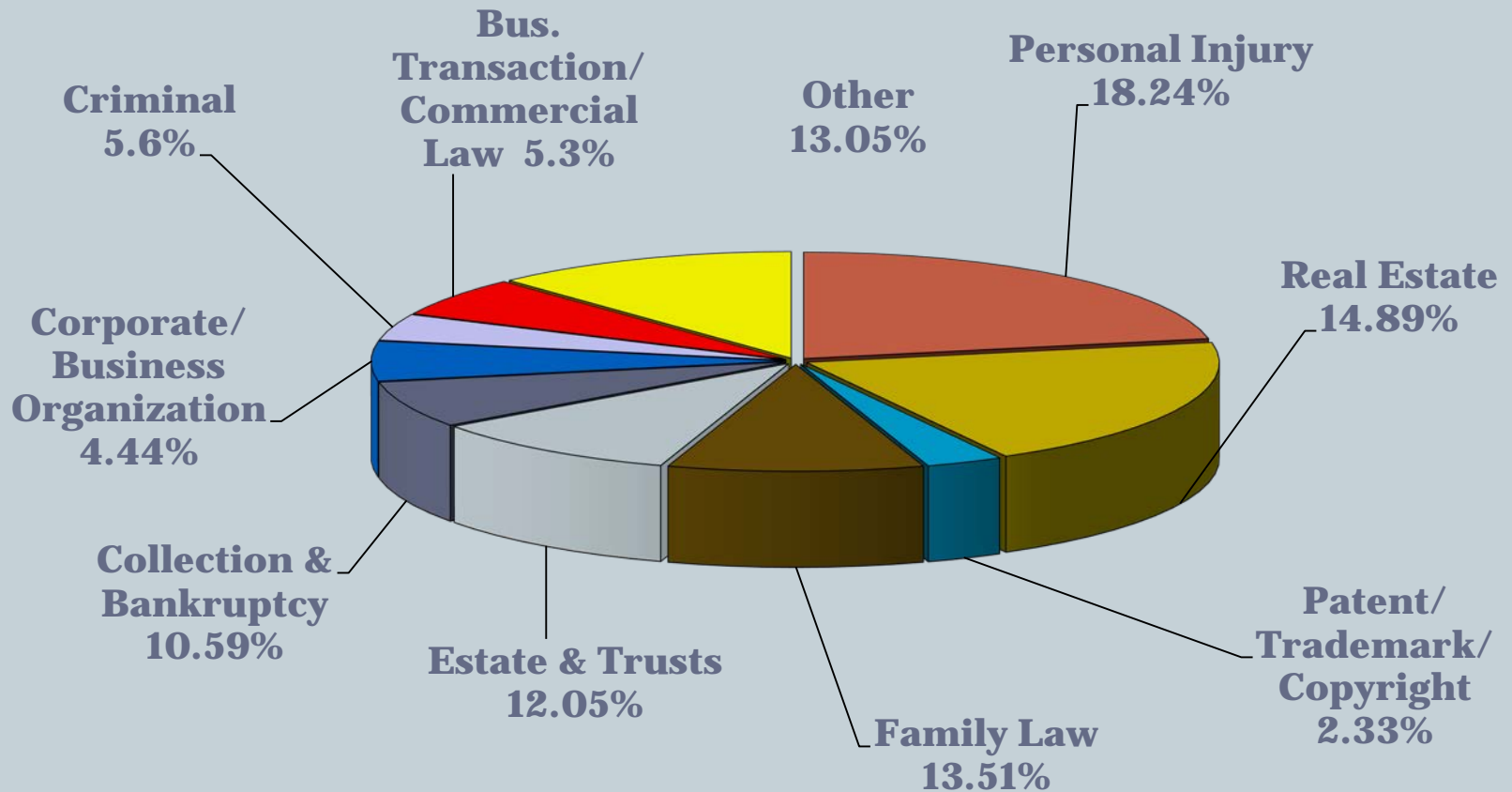
**Practice 360 - A Day for Lawyers & Law Firms**

# Agenda

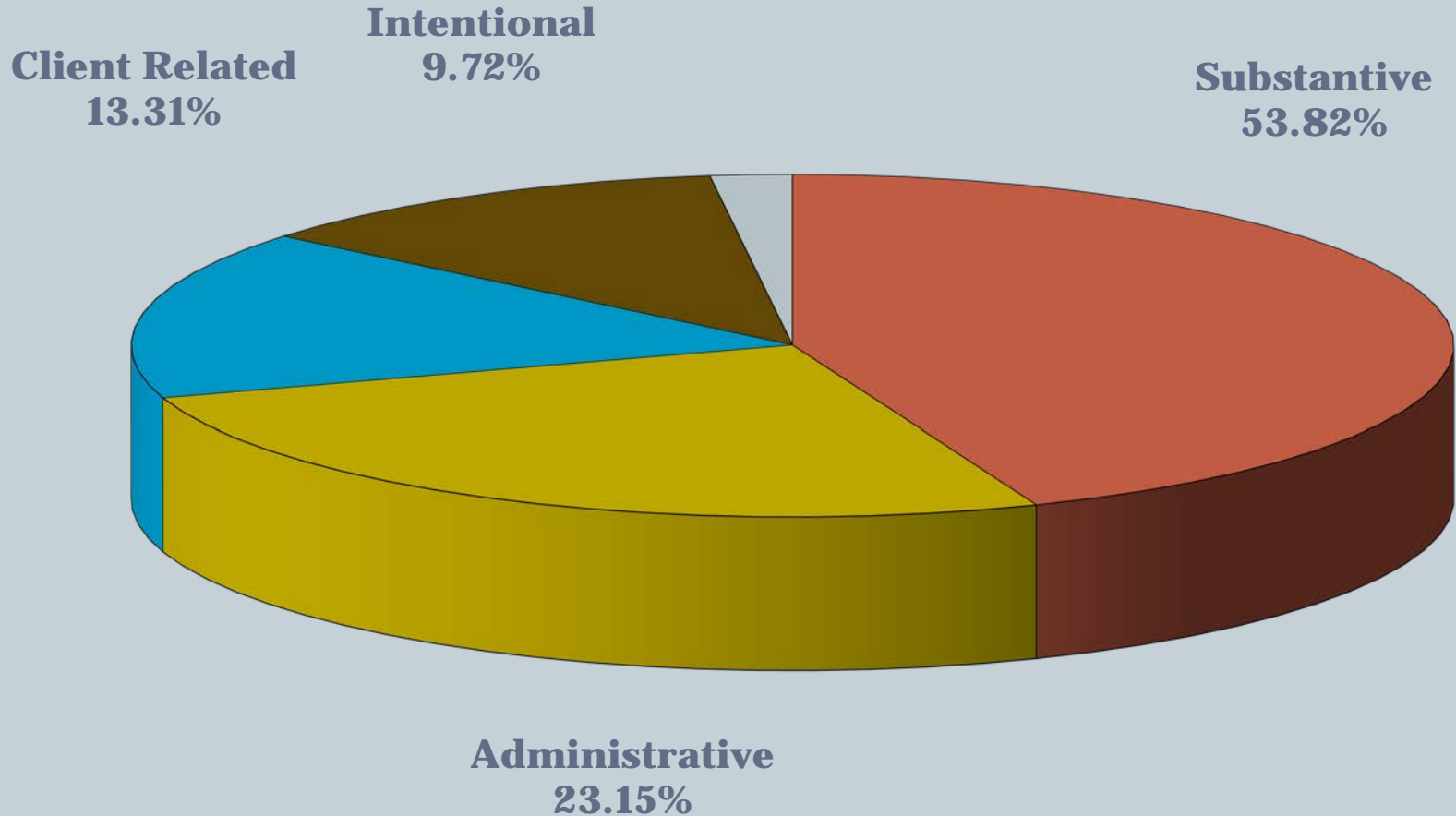


- **Claims Statistics**
- **The Policy**
- **The insurance application**
- **Purchasing the appropriate coverage**
- **Selecting a Carrier**
- **Selecting a Policy**
- **Selecting a Broker**

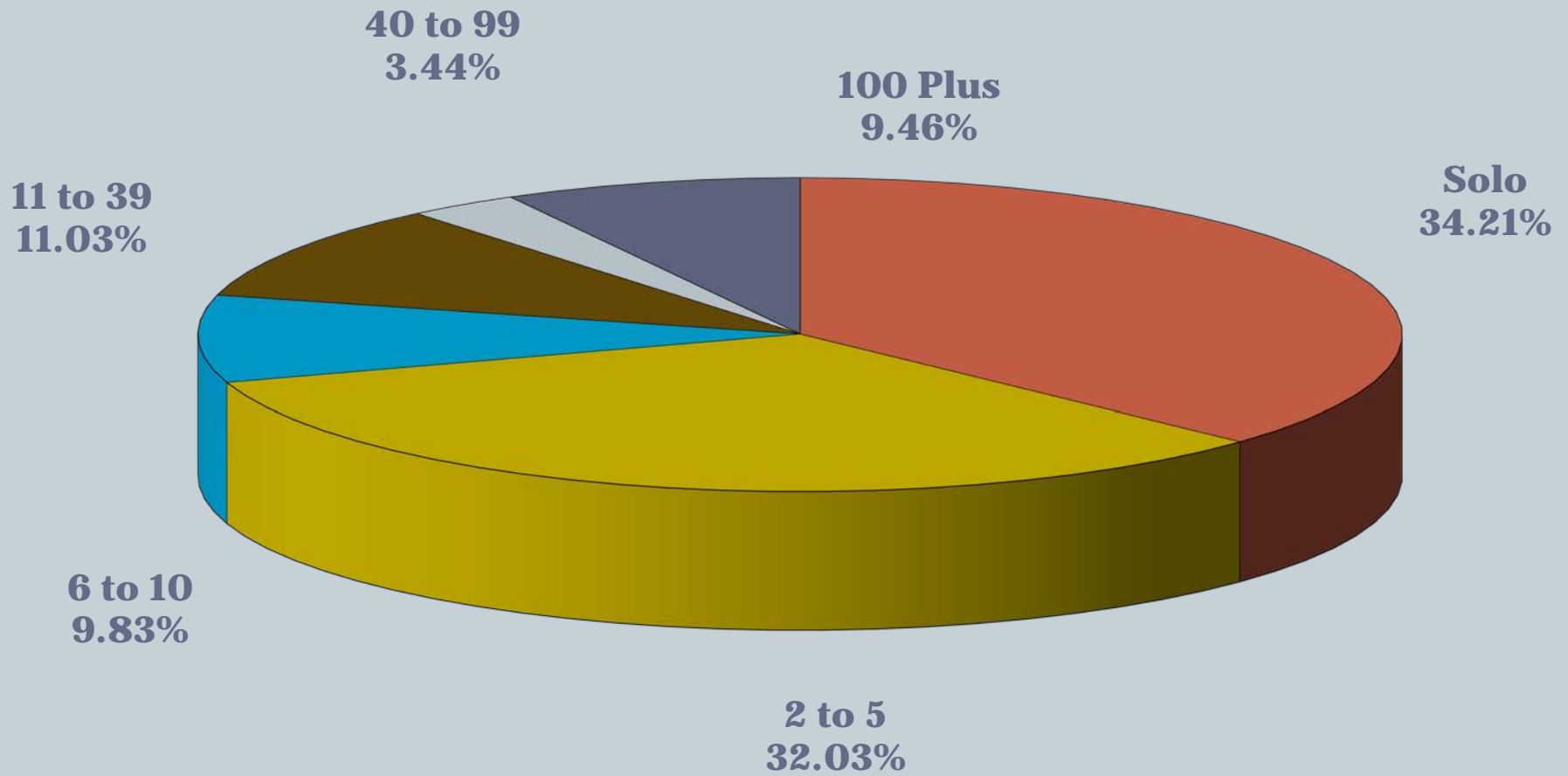
# Areas of Practice



# Percentage of Claim by Type of Error



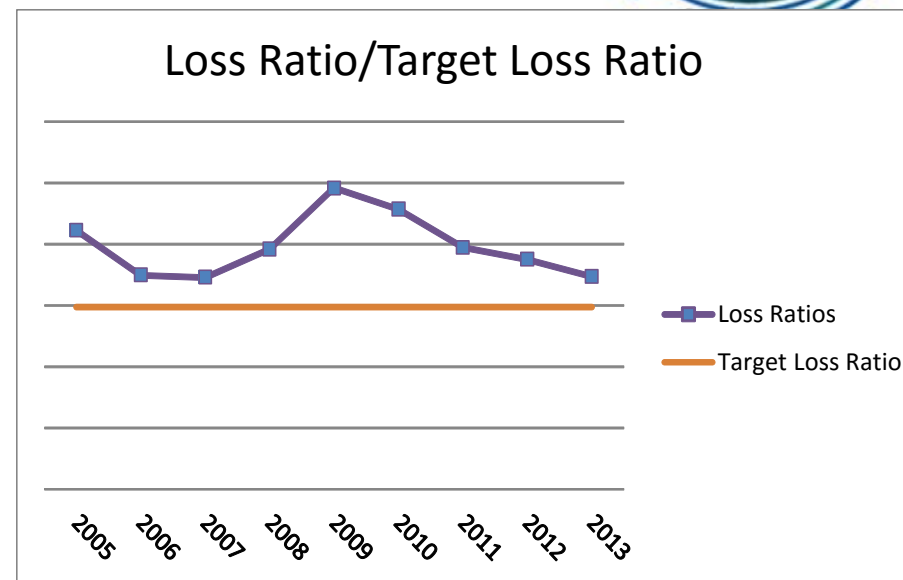
# Percentage of Claim by Size of Firm



# Loss Ratios



- Loss ratios spiked in 2009-2010
  - Economic downturn impact
  - Increase in claims frequency and severity
  - Real Estate, PI, Family Law
- 2011-2015 showing positive signs
  - Frequency of claims continue to slowly decrease
  - Claims being resolved quicker than ever
    - Increase in 5% for <6 months
  - Carriers will look to write business at an underwriting profit.
  - Decrease of Real Estate claims, as economy seems to be turning
  - Wills, Estate, & Trustee claims seem to be on the rise.



\*\*\*Example\*\*\*

# 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.



# 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?

# 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\*

# 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 Coverage's
- Consent to settle Provision
- Extended Reporting Period (Tail Coverage)

# Supplementary Coverage's



- **Disciplinary Proceedings**– Provides defense and other reasonable fees incurred by lawyers to defend you against any disciplinary proceeding brought against you.
- **Subpoena Assistance Coverage** - Comes into play if you are subpoenaed. This coverage covers the cost of another attorney to review the situation, and the lost wages you incur from having to appear in court.
- **Loss of Earnings** – Carrier will reimburse you for actual loss of earnings and reasonable expenses incurred when Carrier requests your attendance at a trial or court-ordered hearing, arbitration or mediation.
- **Crisis Event Expense Reimbursement** - The carrier will pay all reasonable fees, costs and expenses for consulting services provided by a public relations firm in the event of crisis related situation.
- **\*\*Privacy Breach Investigation**– Comes into play if someone accesses your clients private information via computer database or hard copy files. Only one of your client's information needs to be lost for this coverage to respond.
- **\*\*Network Security Breach**– Comes into play when a breach occurs to bring in the certified IT professionals to fix your Network and understand the scope of the breach.

# 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.

# 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%
- **Fee Suits**

# Fee Suit Exclusion



**“In consideration of the premium, no coverage will be available under this policy for damages or claims expenses from any claim or costs in connection with any disciplinary proceeding, brought by or on behalf of any client or former client, or any individual or entity who received or was the intended recipient of the benefit of professional legal services performed by you, if that claim is made against you following the commencement of legal action by you for the purpose of recovering outstanding, overdue or otherwise unpaid legal fees, costs or expenses in connection with those professional legal services.”**



## ■ Fee Suit Tips

- Understand your malpractice policy and any exclusions associated with Fee Suits.
  - 60% of fee suits result in a counter claim for malpractice
- Talk about Fees on Day 1.
- Ask for a retainer.
- Use good billing practices.
- Take steps to resolve dispute.



# 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

# Common Mistakes on an Application



- **An engagement letter should:**
  - Define the scope of the representation and the fees agreed upon.
  - List the attorneys who will be representing the client with their respective rates.
  - State how fees disputes will be resolved.
  - State all parties you will represent.
  - State all parties you will not represent.
  - Identify the matters you will handle and the matters you have not been retained to handle.
  - Specify the manner in which the client will be billed.
  - Discuss how expenses will be handled.

# 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

# What features 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

# What Policy features should I look for on my Liability Policy?



## ■ **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 features should I look for when selecting a broker?



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



# Questions.....





Thank you!

